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Thursday
November 7, 1996

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**Separate Parts In This Issue**



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**Reader Aids**
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

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## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

# Rules and Regulations

Federal Register
Vol. 61, No. 217
Thursday, November 7, 1996



## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 1

### Claims, Administrative Regulations Amendment

**AGENCY:** Office of the Secretary of Agriculture, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Administrative Regulations of the United States Department of Agriculture (USDA) as part of the USDA regulatory reinvention initiative to improve its regulations. This final rule removes those provisions relating to claims submitted prior to 1967 and updates the procedure for filing FTCA claims.

**EFFECTIVE DATE:** December 9, 1996.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, USDA, room 2321, South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, (202) 720–6035.

**SUPPLEMENTARY INFORMATION:**

Background

On April 12, 1996, USDA published in the Federal Register (61 FR 16231) a proposal to revise the administrative regulations of USDA relating to claims submitted pursuant to the Federal Tort Claims Act (FTCA) contained in 7 CFR Part 1, Subpart D. No comments were received pursuant to the proposed rulemaking.

*Executive Order 12866 and Regulatory Flexibility Act*

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule will not have any economic impact.

*Executive Order 12778*

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule: (1) Preempts all state and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

*Paperwork Reduction Act*

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*Small Business Regulatory Enforcement Fairness Act of 1996*

This final rule removes those provisions relating to claims submitted prior to 1967 and updates the procedure for filing FTCA claims. It does not affect substantially the rights of non-agency parties. Accordingly, pursuant to section 804(3)(C) of the Small Business Regulatory Enforcement Fairness Act of 1966, Public Law 104–121, this rule is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 1

Administrative practice and procedure, Agriculture, Claims.

Accordingly, 7 CFR part 1, subpart D is amended as follows:

## PART 1—ADMINISTRATIVE REGULATIONS

### Subpart D—Claims

1. The authority citation for subpart D continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 28 CFR part 14.

2. Section 1.51 is revised to read as follows:

**§ 1.51 Claims based on negligence, wrongful act or omission.**

(a) *Authority of the Department.* Under the provisions of the Federal Tort Claims Act (FTCA), as amended, 28 U.S.C. 2671–2680, and the regulations issued by the Department of Justice (DOJ) contained in 28 CFR part 14, the United States Department of Agriculture (USDA) may, subject to the provisions of the FTCA and DOJ regulations, consider, ascertain, adjust, determine, compromise, and settle claims for money damages against the United States for personal injury, death, or property loss or damage caused by the negligent or wrongful act or omission of any employee of USDA while acting within the scope of his or her office or employment, under circumstances where the United States, if it were a private person, would be liable, in accordance with the law of the place where the act or omission occurred.

(b) *Procedure for filing claims.* Claims must be presented by the claimant, or by his or her duly authorized agent or legal representative as specified in 28 CFR 14.3. Standard Form 95, Claim for Damage or Injury, may be obtained from the agency within USDA that employs the employee who allegedly committed the negligent or wrongful act or omission. The completed claim form, together with appropriate evidence and information, as specified in 28 CFR 14.4, shall be filed with the agency from which it was obtained.

(c) *Determination of claims.*—(1) *Delegation of authority to determine claims.* The General Counsel, and such employees of the Office of the General Counsel as may be designated by the General Counsel, are hereby authorized to consider, ascertain, adjust, determine, compromise, and settle claims pursuant to the FTCA, as amended, and the regulations contained in 28 CFR part 14 and in this section.

(2) *Disallowance of claims.* If a claim is denied, the General Counsel, or his or here designee, shall notify the claimant, or his or her duly authorized agent or legal representative.

Done in Washington, D.C., this 23rd day of October, 1996.

Dan Glickman,

*Secretary of Agriculture.*

[FR Doc. 96–27892 Filed 11–6–96; 8:45 am]

BILLING CODE 3410–01–M

**Federal Crop Insurance Corporation**

**7 CFR Part 457**

**RIN 0563–AB03**

## Common Crop Insurance Regulations; Pear Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of pears. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and combine the current Pear Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms.

**EFFECTIVE DATE:** December 9, 1996.

**FOR FURTHER INFORMATION CONTACT:** Louise Narber, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

Executive Order No. 12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 31, 2001.

This rule has been determined to be not significant for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments, data, and opinions on information collection requirements previously approved by OMB under OMB control number 0563–0003. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) of State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must also annually certify to the previous years production or receive an assigned yield. The producer must maintain the production records to support the certified information for at least 3 years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Thursday, April 25, 1996, FCIC published a proposed rule in the Federal Register at 61 FR 18293–18299 to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR 457.111, Pear Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace the current provisions for insuring pears found at 7 CFR § 401.140 (Pear Endorsement), thereby limiting the effect of the current provisions to the 1997 and prior crop years. After the final rule becomes effective, the current provisions for insuring pears will be removed from § 401.140 and that section will be reserved.

Following publication of that proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. A total of twenty-six (26) comments were received from the crop insurance industry and FCIC. The comments received, and FCIC's responses are as follows:

*Comment:* The crop insurance industry questioned whether Red Bartletts and Green Bartletts would be considered to be the same varietal group, and recommended retaining some kind of ''all other'' category so all varieties are addressed in some manner.

*Response:* Type I and Type II were deleted from the pear provisions to allow varietal grouping by growing region. FCIC recognizes that varietal groups are still necessary since several varieties of pears in addition to Green Bartletts are grown in the Pacific Northwest. In regions where more than one varietal group is grown, separate groupings will be provided on the Special Provisions. No change has been made.

*Comment:* The crop insurance industry recommended that the definition of ''irrigated practice'' should also address the quality of the water being applied.

*Response:* FCIC disagrees. There is no clear criteria regarding the quality of water necessary to produce a crop. The highly variable factors involved would make such criteria difficult to develop and administer. Good farming practices would apply. No change has been made in the definition.

*Comment:* The crop insurance industry questioned what was intended in the definition of ''production guarantee (per acre)'' by the phrase ''and multiply the result by any applicable adjustment factor.''

*Response:* Section 6(f) of the Basic Provisions states, ''If the information reported by you on the acreage report for a unit results in a lower premium than the actual premium determined to be due on the basis of the share, acreage, practice, type or other material information determined to actually exist, the production guarantee or amount of insurance on the unit will be reduced proportionately.* * *'' The definition of ''production guarantee'' simply reflects the possibility of such an adjustment.

*Comment:* The crop insurance industry stated that providing insureds with optional units by section, section equivalent or farm serial number, or optional units by non-contiguous land could cause confusion and that producers may not understand their options.

*Response:* Most policies offer optional units by section, section equivalent, irrigated land, or non-contiguous land. Insurance providers have adequately explained these policy choices to producers in the past. FCIC anticipates that insurance providers will continue to be able to explain available coverage options. No changes have been made.

*Comment:* The crop insurance industry stated that optional units should be allowed by variety rather than varietal group (*i.e.*, Red Bartlett and Green Bartlett are distinct varieties and should be allowed to be separate optional units).

*Response:* Permitting unit division by variety could lead to extremely small insurance units and an increase in the frequency of losses and overall loss adjustment experiences. In some cases a few rows of a pollinator variety could qualify as an insurance unit. These extremely small insurance units would increase paperwork, administrative expenses, and spot losses. No change has been made.

*Comment:* The crop insurance industry stated that they did not understand why all optional units must be identified on the acreage report for each crop year. They said that listing every possible combination for every crop on a policy could test the limits on the number of policy lines allowed.

*Response:* Only those optional units determined under the selected method for the crop year for which the acreage report is completed must be listed. Optional unit designations from past years, or that could have been established for the current year but were not, should not be listed on the current crop years' acreage report. This provision has been clarified.

*Comment:* The crop insurance industry stated that the provisions refer to a *pro rata* refund when optional units are combined into basic units whenever the insured reported optional units but does not qualify. They questioned on what basis a *pro rata* refund would be determined.

*Response:* The reference to a *pro rata* refund has been deleted and the sentence changed to read ''If failure to comply with these provisions is determined to be inadvertent and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.''

*Comment:* The crop insurance industry questioned if the provision ''You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee'' could cause confusion between the APH or policy crop year.

*Response:* The last year used to determine the production guarantee refers to the most recent year included in the APH data base. Such year is always an APH crop year and may or may not be a year in which a policy was in force. FCIC believes the provision is clearly stated and has not made changes.

*Comment:* The crop insurance industry suggested that section 3(a) begin with the phrase ''You may select only one price percentage * * *.'' It would not then be necessary to say so much about when different varieties have different maximum prices.

*Response:* The method to select price elections varies between insurance providers. While some require selection of a percentage, others require a selection of a specific dollar amount. The suggested changes will not work for all circumstances. No change has been made to the provisions.

*Comment:* The crop insurance industry suggested that the insurance provider modify the APH yield for the next crop year when damage, removal of trees or change in practices may reduce yields from previous levels. They stated that there is no procedure for reducing the guarantee at the time of loss.

*Response:* Guarantees are determined at the beginning of the crop year. These Pear Crop Provisions provide the authority to reduce the APH yield when tree damage has occurred or cultural practices have been performed that will reduce the insured crop from previous production levels at the time the guarantee is established or at any time the insurance provider discovers the damage, removal of trees or change in practice.

*Comment:* The crop insurance industry questioned whether the sales closing date for pears in California will be changed to January 31 to match the new cancellation/termination dates.

*Response:* The sales closing date for pears in California will be changed to January 31.

*Comment:* The crop insurance industry questioned what is meant by ''In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8): (1) Coverage begins for each crop year on the later of the date we accept your application or: (i) In California, on February 1; or (ii) In all other states, on November 21.'' They asked if the intent is to allow acceptance of applications after the sales closing date.

*Response:* Section 11 of the Basic Provisions states that coverage begins on the later of the date of application, when the insured crop is planted, or the date specified in the crop provisions. This provision provides that date. FCIC has also clarified this provision to provide the date when coverage begins in the year of application when the producer's application is received by the insurance provider within 10 days of the sales

closing date. These provisions were modified so they will not be interpreted as allowing late filed applications.

*Comment:* The crop insurance industry recommended removing the requirement that a written agreement be renewed each year. If no substantive changes occur from one year to the next, the written agreement should be continuous.

*Response:* Provisions regarding written agreements require that the guarantee, premium rate, and price election be included on the agreement. Since one or more of these items typically change each year, the agreement must be renewed every year. No change is made.

*Comment:* The crop insurance industry stated that the Pear Quality Adjustment Endorsement should be removed from the crop provisions and drafted as a separate endorsement, which would only be issued to those insureds who elect the additional coverage. Otherwise CAT insureds and others may think such coverage is included as a part of their crop provisions. It was also suggested that the provisions in section 13(a) follow those contained in section 13(b).

*Response:* FCIC believes that the quality adjustment endorsement should be included in the Pear Crop Insurance Provisions so that pear producers can readily see their coverage options. However, the endorsement has been clarified to state in section 13(a) that the endorsement does not apply if the insured insures the pears under the catastrophic risk protection (CAT) endorsement or has not specifically selected such coverage. Therefore, FCIC does not believe that persons insured under the Catastrophic Risk Protection Endorsement or others who did not elect this coverage will think they have this coverage. For further clarification, provisions contained in sections 13(a) and (b) of the proposed rule have been combined.

*Comment:* The crop insurance industry is concerned that section 13(c)(1)(ii) is more complicated than necessary. Their interpretation was that the production will be reduced to zero and that the total production would be considered cull production.

*Response:* When more than sixty percent of the pears fail the grade standard the production will be reduced to zero and that production will be considered cull production. FCIC believes that the provisions are written as clearly as possible.

*Comment:* The crop insurance industry stated that section 13(c)(2) is not necessary because such pears would be included under section 13(c)(1) whenever an appraisal is made.

*Response:* FCIC has reformatted the provisions but believes all the provisions are necessary for clarity.

*Comment:* One comment received from an FCIC office recommended that production be adjusted when it does not grade ninety percent (90%) U.S. No. 2 grade or better in accordance with applicable United States Standards for Grades of Summer and Fall Pears, United States Standards for Grades of Winter Pears, or United States Standards for Grades of Pears for Processing, as applicable when the damage is caused by hail. Proposed provisions contained in section 13(c)(1) allowed adjustment only when production did not grade eighty percent (80%) U.S. No. 2 or better. The comment stated that the majority of orchards normally produce eighty-seven percent (87%) to ninety-five percent (95%) U.S. No. 2 grade or better and eighty percent (80%) did not give adequate protection to the producers. Although, five to thirteen percent of all pears are culls, very few of these pears are damaged by a cause of loss covered under the endorsement.

*Response:* FCIC agrees that eighty percent (80%) may not provide adequate coverage and has increased the amount to ninety percent (90%).

In addition to the changes described above, FCIC has made the following changes:

1. Section 1—Clarify the definitions of ''FSA,'' ''non-contiguous,'' and ''written agreement''. Delete the definition of ''culls'' because fruit that is considered to be cull production for the purposes of this policy is sufficiently identified in section 13.

2. Section 3(b)—Amend the provision to include any circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based. The proposed rule required an insured to report only damage, removal of trees, and changes in practices and there may be other circumstances that may affect the yield.

3. Section 8(b)(1)—Clarify that if the producer acquires an insurable share after coverage begins but on or before the acreage reporting date, insurance attaches on the calendar date for the beginning of the insurance period.

4. Section 8(b)(2)—Clarify that not only will insurance not attach but no premium will be due if the producer relinquishes an insurable interest in any insurable acreage of pears on or before the acreage reporting date of any crop year unless a transfer of coverage and right to an indemnity is completed and the insurance provider is notified in writing on or before the acreage reporting date. Clarify that the transferee must also be eligible for crop insurance.

5. Section 10(b)—Simplify the provision to remove any ambiguity.

6. Section 10(c)—Modify the provision to specify that the producer must notify the insurance provider at least 15 days prior to the beginning of harvest if the producer previously gave notice in accordance with section 14 of the Basic Provisions (§ 457.8). Also specify that if the producer fails to meet the requirements of this section, and such failure results in the insurance providers inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

7. Section 11—Add a provision to specify that an amount of production not less than the production guarantee per acre will be counted if the producer fails to notify the insurer of acreage that is to be sold by direct marketing to conform to section 10(b). Also clarify the claim settlement calculation and the quality adjustment provisions for pears grown in California.

8. Section 13—Clarify the pear quality adjustment endorsement provisions. Also, limit the cause of loss to hail only in section 13(b)(1) to be consistent with optional coverage provided for apples in the same area.

List of Subjects in 7 CFR Part 457

Crop insurance, Pears, Reporting and recordkeeping requirements.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1998 and succeeding crop years, as follows:

## PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p) .

2. 7 CFR part 457 is amended by adding a new § 457.111 to read as follows:

### § 457.111 Pear crop insurance provisions.

The Pear Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC Policies:

DEPARTMENT OF AGRICULTURE

*Federal Crop Insurance Corporation*

Reinsured Policies:

(Appropriate title for insurance provider)

Both FCIC and Reinsured Policies:

Pear Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

*Days*—Calendar days.

*Direct marketing*—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper, or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

*FSA*—The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

*Good farming practices*—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and generally recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

*Harvest*—The picking of mature pears from the trees or the collecting of marketable pears from the ground.

*Interplanted*—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

*Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

*Marketable*—Pear production acceptable for processing or other human consumption even if failing to meet any U.S. or applicable state grading standard.

*Non-contiguous*—Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

*Production guarantee (per acre)*—The quantity of pears (in tons) determined by multiplying the approved APH yield per acre by the coverage level percentage you elect, and multiplying the result by any applicable adjustment factor provided in section 6(f) of the Basic Provisions (§ 457.8).

*Ton*—Two thousand (2,000) pounds avoirdupois.

*Varietal group*—Types of pears with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

*Written agreement*—A written document that alters designated terms of this policy in accordance with section 12.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), a basic unit, may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(b) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(d) All optional units established for a crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee; and

(2) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us.

(3) Each optional unit must meet one or more of the following criteria as applicable:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number; or

(ii) *Optional Units on Acreage Located on Non-Contiguous Land:* In lieu of establishing optional units by section, section equivalent or FSA Farm Serial Number, optional units may be established if each optional unit is located on non-contiguous land.

(iii) *Optional Units on Acreage by Varietal Group:* In addition to, or instead of, establishing optional units by section, section equivalent, FSA Farm Serial Number, or on non-contiguous land, optional units may be established by varietal group when provided for in the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the pears in the county insured under this policy unless the Special Provisions provide different price elections by varietal group, in which case you may select one price election for each varietal group designated in the Special Provisions. The price elections you choose for each varietal group must have the same percentage relationship to the maximum price offered by us for each varietal group. For example, if you choose one hundred percent (100%) of the maximum price election for one varietal group, you must also choose one hundred percent (100%) of the maximum price election for all other varietal groups.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by varietal group:

(1) Any damage, removal of trees, change in practices or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and any time the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and type if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield. We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: interplanted perennial crop; removal of trees; damage; change in practices or any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time that we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is October 31 preceding the cancellation date for states with a January 31 cancellation date and August 31 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are:

| States | Cancellation and termination dates |
|---|---|
| California | January 31. |
| All other states | November 20. |

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the pears in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are of varieties adapted to the area;

(c) That are grown on trees that have produced an average of at least five (5) tons of pears per acre in at least one of the four previous crop years unless the Special Provisions or a written agreement establishes a lower production level; and

(d) That are grown in an orchard that, if inspected, is considered acceptable by us.

7. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, pears interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins:

(i) In California, on February 1 of each crop year, except that for the year of application, if your application is received after January 22 but prior to February 1, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard; or

(ii) In all other states, on November 21 of each crop year, except that for the year of application, if your application is received after November 11 but prior to November 21, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is:

(i) September 15 for Bartlett (green and red) and Star Crimson (Crimson Red) varietal groups; or

(ii) October 15 for all other varietal groups.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable interest on any insurable acreage of pears on or before the acreage reporting date of any crop year, insurance will not be considered to have attached to, and no premium will be due, and no indemnity paid, for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(3) Earthquake;

(4) Volcanic eruption; or

(5) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available.

(2) Failure of the fruit to color properly; or

(3) Inability to market the pears for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest if you previously gave notice in accordance with section 14 of the Basic Provisions (§ 457.8), so that we may inspect the damaged production. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section, and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate, acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each varietal group if applicable, by its respective production guarantee;

(2) Multiplying the results of section 11(b)(1) by the respective price election for each varietal group, if applicable;

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to be counted of each varietal group, if applicable, by the respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting this result of section 11(b)(5) from the result of section 11(b)(3); and

(7) Multiplying the result of section 11(b)(6) by your share.

(c) The total production to count (in tons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 10;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in

which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) For all states except California, all harvested and appraised marketable pear production from the insurable acreage.

(3) For California, all harvested and appraised production that:

(i) Meets the standards for first grade canning as defined by the California Pear Advisory Board or for U.S. Number 1 as defined by the United States Standards for Grades of Summer and Fall Pears, or Pears for Processing, or for U.S. Extra Number 1 or U.S. Number 1 as defined by the United States Standards for Grades of Winter Pears;

(ii) Is accepted by a processor for canning or packing; or

(iii) Is marketable for any purpose. However, if the pears are damaged by an insured cause, the production to count will be reduced by the greater of the following amounts:

(A) The excess over ten percent (10%) of pears that are size 180 or smaller for varieties other than Forelle, Seckel or Winter Nelis; or

(B) The result of dividing the value per ton of such pears by the highest price election for the insured varietal group, subtracting this result from 1.000, and multiplying this difference (if positive) by the number of tons of such pears.

12. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 12(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

13. Pear Quality Adjustment Endorsement

(a) This endorsement applies to any crop year: *Provided,*

(1) The insured pears are located in a State other than California and the actuarial table designates a premium rate for this endorsement;

(2) You have not elected to insure your pears under the Catastrophic Risk Protection (CAT) Endorsement;

(3) You elected it on your application or other form approved by us, and did so on or before the sales closing date for the initial crop year for which you wish it to be effective. By doing so, you agreed to pay the additional premium designated in the actuarial table for this optional coverage; and

(4) You or we did not cancel it in writing on or before the cancellation date. Your election of CAT coverage for any crop year after this endorsement is effective will be considered as notice of cancellation by you.

(b) If the pear production is damaged by hail and if eleven percent (11%) or more of the harvested and appraised production does not grade at least U.S. No. 2 in accordance with applicable United States Standards for Grades of Summer and Fall Pears, United States Standards for Grades of Winter Pears, or United States Standards for Grades of Pears for Processing, as applicable, due solely to hail, the amount of production to count will be reduced as follows:

(i) By two percent (2%) for each full one percent (1%) in excess of ten percent (10%), when eleven percent (11%) through sixty percent (60%) of the pears fail the grade standard; or

(ii) By one hundred percent (100%) when more than sixty percent (60%) of the pears fail the grade standard.

The difference between the reduced production determined in section 13(b) and the total production will be considered as cull production.

(c) Pears that are knocked to the ground by wind or that are frozen and cannot be packed or marketed as fresh pears will be considered one hundred percent (100%) cull production.

(d) Marketable production that grades less than U.S. No. 2 due to causes not covered by this endorsement will not be reduced.

(e) Fifteen percent (15%) of all production considered as cull production in accordance with section 13 (b) and (c) will be production to count.

Signed in Washington, D.C., on October 31, 1996.

Kenneth D. Ackerman,

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 96–28607 Filed 11–6–96; 8:45 am]

BILLING CODE 3410–FA–P

## 7 CFR Part 457

**RIN 0563–AB56**

## Common Crop Insurance Regulations; Texas Citrus Fruit Crop Insurance Provisions; Correction

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains corrections to the final regulation which was published Thursday, August 8, 1996 (61 FR 41297–41303). The regulation pertains to the insurance of Texas citrus fruit.

**EFFECTIVE DATE:** November 6, 1996.

**FOR FURTHER INFORMATION CONTACT:** Louise Narber, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

Background

The final regulation that is the subject of this correction was intended to provide policy changes to better meet the needs of the insured and to combine the Texas Citrus Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms.

Need For Correction

As published, the final regulations contained an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication on August 8, 1996, of the final regulation at 61 FR 41297–41303 is corrected as follows:

### PART 457—[CORRECTED]

**§ 457.119 [Corrected]**

On page 41302, in the second column, in § 457.119, section 10(a)(8) is corrected to read ''Failure of the irrigation water supply if caused by an insured peril or drought that occurs during the insurance period.''

Signed in Washington D.C., on October 31, 1996.

Kenneth D. Ackerman,

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 96–28606 Filed 11–6–96; 8:45 am]

BILLING CODE 3410–FA–P

## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

## 8 CFR Part 103

**[INS No. 1802–96]**

## Extension of Implementation Date for Use of Designated Fingerprinting Services

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** A final rule certifying Designated Fingerprinting Services (DFS) to take fingerprints of applicants for immigration benefits was published by the Immigration and Naturalization

Service (''the Service'') in the Federal Register on June 4, 1996, with an effective date of July 5, 1996. Implementation was to have begun on November 1, 1996. Due to an insufficient number of certification requests received by the Service, the Service is amending its regulations by extending the implementation date. This will give prospective DFSs additional time to submit their applications. The purpose is to ensure adequate fingerprint services are available to applicants for immigration benefits. The Service will now require applicants for immigration benefits to submit fingerprints taken either by Service officers or those entities that have filed an application for DFS certification with the Service before March 1, 1997.

**EFFECTIVE DATE:** November 1, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Customer Service Branch, Immigration and Naturalization Service, Benefits Division, Room 3040, 425 I Street, NW., Washington, DC 20536, telephone (202) 307–3587 or Jack Rasmussen, Staff Officer, (202) 514–3156, fax (202) 514–2093.

**SUPPLEMENTARY INFORMATION:**

Background

The final rule certifying Designated Fingerprinting Services (DFSs) to take fingerprints of applicants for immigration benefits was published by the Service in the Federal Register on June 4, 1996, at 61 FR 28003, and became effective on July 5, 1996. That final rule established the eligibility requirements and application procedures for DFS certification. The implementation of that rule will facilitate the processing of applicants for immigration benefits, protect the integrity of the fingerprinting process, and relieve the strain on Service personnel from taking fingerprints. The final rule would have been implemented in two stages: (1) As of November 1, 1996, the Service would have required that all fingerprints submitted to taken by a Service employee, a DFS fingerprinter, including law enforcement agency that is registered as a DFS, or an intending DFS who has completed and filed an application for certification with the Service; and (2) as of January 1, 1997, the Service would have only accepted from applicants for immigration benefits fingerprint cards taken by an approved or authorized entity or Service employee.

Extension of the Implementation Dates

In order to ensure adequate fingerprint services are available to applicants for benefits, the Service is extending the DFS implementation date to March 1, 1997. As of that date, all fingerprints submitted to INS with applications must have been taken by a DFS fingerprinter, including law enforcement agencies who file for DFS status, an intending DFS who has completed and filed an application for certification with the Service, or a Service employee. The time required for adjudication of an application may vary due to the need for additional information. Since we do not wish to interrupt the operation of a business unnecessarily, no final cessation date for the authority of ''pending'' applications will be imposed until the application has been adjudicated. However, prospective DFSs who file their applications on or after March 1, 1997, must wait until after their applications have been processed and they have been certified by the Service before beginning to provide fingerprint services.

The Service's implementation of this rule as a final rule is based on the ''good cause'' exception found at 5 U.S.C. 553(b)(B). The reason and necessity for immediate implementation are as follows: This regulation relates to agency management and practice of good customer service because it will give prospective DFSs more time to file their applications and allow the public to utilize fingerprinting services in their own communities.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule merely extends the implementation date to allow prospective DFS's sufficient time to submit their applications.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12988

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

## PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 125b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.2 is amended by:

a. Revising the introductory text in paragraph (e)(3); and

b. Revising paragraph (e)(3)(ii), to read as follows:

**§ 103.2 Applications, petitions, and other documents.**

* * * * *

(e) * * *

(3) *Transition to use designated fingerprinting services.* As of March 1, 1997, the Service will not accept fingerprint cards for immigration benefits unless they are taken by:

* * * * *

(ii) An intending DFS or organization that has completed and filed an application for DFS status prior to March 1, 1997, which may, pending the Service's action upon its application, take fingerprints and complete the Form I–850A, indicating that its application for DFS status is pending. This provisional authority for an outside entity shall cease when its application is denied;

* * * * *

Dated: October 31, 1996.

Doris Meissner,

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 96–28585 Filed 11–1–96; 4:25 pm]

BILLING CODE 4410–10–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 121

**[Docket No. 27219; Amendment 121–261]**

**RIN 2120–AD74**

## Protective Breathing Equipment; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to the Protective Breathing Equipment final rule, 61 FR 43918, published August 26, 1996. The rule amended the regulations governing portable protective breathing equipment (PBE) required for crewmembers' use in combating in-flight fires. It is intended to codify exemptions currently in place, clarify ambiguities in the existing regulation, and allow air carriers added flexibility with compliance while maintaining or increasing safety. This action will correct the final rule statement that removes paragraph (d)(1) of § 121.337, since paragraph (d) of § 121.337 was removed as a result of the Commuter Operations and General Certification and Operations Requirement final rule, 60 FR 665832, published December 20, 1995.

**EFFECTIVE DATE:** November 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** Gary Davis, 202–267–8096.

The Correction

In considering of the foregoing, the Federal Aviation Administration corrects the final rule published August 26, 1996, (61 FR 43918) amending 14 CFR part 121. On page 43921 in the third column, amendatory instruction number 2 is corrected to read as follows: ''2. Section 121.337 is amended by removing paragraph (b)(9)(i); by redesignating paragraphs (b)(9)(ii), (b)(9)(iii), and (b)(9)(iv) as (b)(9)(i), (b)(9)(ii), and (b)(9)(iii); by revising paragraph (b)(9)(iii); and by revising newly designated paragraph (b)(9)(iii).''

Issued in Washington, DC on October 28, 1996.

Donald P. Byrne,

*Assistant Chief Counsel.*

[FR Doc. 96–27991 Filed 11–6–96; 8:45 am]

BILLING CODE 4910–13–M

## Coast Guard

## 33 CFR Part 117

**[CGDO5–95–081]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations; Anacostia River, Washington, DC

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** At the request of the Consolidated Rail Corporation (CONRAIL), the Coast Guard is changing the regulations that govern the operation of the railroad bridge across the Anacostia River, mile 3.4 at Washington, DC, by extending the winter seasonal restrictions and reducing the hours of operation during the boating season. This rule is intended to relieve the bridge owner of the burden of having a bridgetender staff the bridge during periods of non-use, while still providing for the reasonable needs of navigation.

**EFFECTIVE DATE:** This rule is effective on December 9, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, U.S. Coast Guard Atlantic Area, at (757) 398–6222.

**SUPPLEMENTARY INFORMATION:**

Regulatory History

On January 10, 1996, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Anacostia River, Washington, DC'' in the Federal Register (61 FR 709). The comment period ended April 9, 1996. Four comments were received. A public hearing was not requested and one was not held.

Background and Purpose

The CONRAIL drawbridge crosses the Anacostia River at mile 3.4. The proposed changes were requested by CONRAIL to extend the Winter seasonal restrictions, and reduce the hours of operation during the boating season. This will relieve the bridge owner of the burden of having a bridgetender staff the bridge during periods of non-use.

Discussion of Comments and Changes

Current 33 CFR 117.253(b) requires the draw of the CONRAIL bridge to open on signal: At any time for public vessels, State and local government vessels, commercial vessels, and any vessels in an emergency involving danger to life or property year round; on Saturdays, Sundays and Federal holidays from April 1 through September 30 for recreational boats; and on Weekdays other than Federal holidays between the hours of 7 a.m. and 11 p.m. from April 1 through September 30 for recreational boats. It must open at all other times for recreational boats if at least eight hours notice is given. Under the proposed changes to § 117.253(b) in the NPRM, the bridge would be required to continue to open on signal year round for public vessels, State and local government vessels, commercial vessels, and any vessels in an emergency involving danger to life or property. However, it would not be required to open on signal for recreational vessels except between the hours of 9 a.m. and 12 noon and 1 p.m. and 6 p.m. from May 15 to September 30. It would also be required to open between 6 p.m. and 7 p.m. from May 15 to September 30 is notice is given to the bridge tender not later than 6 p.m. on the day on which the opening is requested.

Four comments were received. A letter from a group of Anacostia River bridge tenders claimed that the volume of traffic would increase as a result of proposed development upriver from the bridge. According to the comment, the State of Maryland recently purchased an upriver marina and has begun renovations to attract additional boating traffic. It also claimed that the data on which CONRAIL based its request was invalid. It asked the Coast Guard to delay any changes in the bridge operating schedule until after the 1996 boating season. A second letter from a transportation workers union asked the Coast Guard to deny the requested change. It also claimed that planned development by the State of Maryland would increase boating traffic and that the request was based on invalid data. A letter from a conservation group opposed the proposed changes due to concerns that they would restrict access by emergency response vessels and would have a negative impact on recreational boating. A letter from D.C. Fireboats expressed concern that the proposed changes would restrict access by emergency response vessels during periods of unexpected high water which would require a bridge opening for their boats. It did not oppose the proposed

changes, but asked that procedures should be in place to allow the bridge to be opened on short notice.

Copies of the comments were provided to CONRAIL. In its letter of May 6, 1996, a copy of which is in the public docket for this rulemaking, CONRAIL responded to the comments. It contended that the impact of upriver development was speculative, and noted that the State of Maryland did not comment on the proposed changes. It noted that historic data for 1993 and 1994 showed infrequent bridge openings and that under the proposed changes the bridge would continue to be manned and open on demand during periods of most frequent use. It agreed that arrangements are needed to open the bridge for emergency response vessels on short notice, and they will be required to post a sign providing a 24-hour emergency point of contact. CONRAIL advised the Coast Guard that once a request for an emergency opening is received during periods the bridge is unmanned, an opening will occur within 30 minutes of that request. D.C. Fireboats expressed to the Coast Guard that this arrangement is acceptable to them and relieves their concerns.

The Coast Guard believes that the historic data indicates that adoption of the proposed changes will continue to meet the reasonable needs of navigation. The schedule may be further revised as needed to respond to changes in traffic volume. The Coast Guard agrees that timely bridge openings for emergency response vessels must be ensured, and this rulemaking does not change that requirement. To ensure a rapid response, the Coast Guard has added a requirement that CONRAIL post a sign on the bridge providing a 24-hour emergency point of contact to arrange for bridge openings on short notice when the bridge is unmanned.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612, and it has determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, 29 July 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations to read as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.253, paragraphs (b)(1)(ii) and (iii) are revised, and paragraph (b)(3) is added to read as follows:

**§ 117.253 Anacostia River.**

* * * * *

(b) * * *

(1) * * *

(i) * * *

(ii) Between 9 a.m. and 12 noon and between 1 p.m. and 6 p.m. from May 15 through September 30.

(iii) Between 6 p.m. and 7 p.m. from May 15 through September 30 if notice is given to the bridgetender not later than 6 p.m. on the day for which the opening is requested.

* * * * *

(2) * * *

(3) The owners of the bridge shall provide and keep in good legible condition signs providing a 24-hour emergency telephone number which may be called to arrange for bridge openings. The signs shall be painted in contrasting colors with letters and numbers not less than six inches high. The signs shall be placed on the bridge so that they are plainly visible to the operator of any vessel approaching the bridge from either upstream or downstream.

Dated: October 18, 1996.

Kent H. Williams,

*Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.*

[FR Doc. 96–28651 Filed 11–6–96; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

**RIN 2900–AI35**

### Diseases Associated With Exposure to Certain Herbicide Agents (Prostate Cancer and Acute and Subacute Peripheral Neuropathy)

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning presumptive service connection for certain diseases for which there is no record of the disease during service. This amendment is necessary to implement a decision of the Secretary of Veterans Affairs, under the authority granted by the Agent Orange Act of 1991, that there is a positive association between exposure to herbicides used in the Republic of Vietnam during the Vietnam era and the subsequent development of prostate cancer and acute and subacute peripheral neuropathy. The intended effect of this amendment is to establish presumptive

service connection for those conditions based on herbicide exposure.

**EFFECTIVE DATE:** This amendment is effective November 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service (213), Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7230.

**SUPPLEMENTARY INFORMATION:** VA published a proposal to amend 38 CFR 3.307(a) and 3.309(e) to establish presumptive service connection for prostate cancer and acute and subacute peripheral neuropathy based on exposure to herbicides in the Federal Register of August 8, 1996 (61 FR 41368–71). Interested persons were invited to submit written comments concerning the proposal on or before September 9, 1996. We received three comments from private individuals; one comment from a veterans' service organization, the Vietnam Veterans of America, Inc.; and one comment from a United States Senator.

The Vietnam Veterans of America, Inc., indicated that it had no reservations with the language of the proposed rule, commended VA's timely response to the 1996 National Academy of Sciences (NAS) report ''Veterans and Agent Orange: Update 1996,'' and urged VA to publish the final regulations as soon as possible in order to afford the earliest possible effective date for compensation benefits based on herbicide-related prostate cancer and acute and subacute peripheral neuropathy.

Two commenters asked that VA defer publishing final regulations until it could study Vietnam veterans suffering from chronic peripheral neuropathy.

38 U.S.C. 1116(c)(1)(A) requires that the Secretary, not later than 60 days after the date on which he receives a report from NAS, determine whether a presumption of service connection is warranted for each disease covered by the report and, if the Secretary determines that a presumption is warranted, issue proposed regulations within 60 days thereafter. 38 U.S.C. 1116(c)(2) requires the Secretary to issue final regulations establishing presumptive service connection for any condition for which he determines there is a positive association with exposure of humans to an herbicide agent not later than 90 days after he has issued proposed regulations. The Secretary is not free to ignore these statutory requirements. For reasons more fully explained in the proposal, the Secretary has concluded that presumptive service connection is warranted for acute and subacute peripheral neuropathy, and VA is, therefore, proceeding with publication of a final rule notwithstanding these comments.

One commenter noted that VA had previously proposed to recognize an association between peripheral neuropathy and exposure to dioxin without excluding chronic peripheral neuropathy and stated it should now recognize chronic peripheral neuropathy as associated with herbicide exposure since the only changed circumstance was VA's subsequent contract with NAS to review, summarize, and assess the scientific evidence concerning the association between herbicide exposure and particular diseases.

In the Federal Register of January 21, 1992 (See 57 FR 2236–38), VA published a proposed rule to recognize an association between peripheral neuropathy and exposure to herbicides containing dioxin; however, a final rule was never published. That proposed rulemaking was initiated to implement a preliminary determination under the provisions of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Public Law 98–542, that there was a significant statistical association between exposure to herbicides containing dioxin and the subsequent development of peripheral neuropathy.

The Agent Orange Act of 1991, Public Law 102–4, established different standards governing VA rulemaking than were applicable under Public Law 98–542. Under the Agent Orange Act, VA is required to determine, based on reports from NAS and all other sound medical and scientific information and analyses available to it, whether the credible evidence for an association between herbicide exposure and a disease is equal to or outweighs the credible evidence against an association. NAS reports received by VA in 1993 and 1996 reviewed a broader range of medical and scientific evidence than VA had considered in connection with the 1992 proposed rules, including several studies published since January 21, 1992, and concluded that there was inadequate/insufficient evidence to determine whether an association exists between herbicide exposure and chronic peripheral neuropathy. Pursuant to the standards of the Agent Orange Act, VA has determined that the evidence against an association between herbicide exposure and chronic peripheral neuropathy outweighs the evidence for such an association and has published a notice of that determination, including an explanation of the scientific basis for that determination, in the Federal Register of August 8, 1996 (See 61 FR 41442, 41446–47). Accordingly, because VA's determination is based upon a different, and more comprehensive, body of evidence, and the specific rulemaking requirements of the Agent Orange Act, we take no action based on this comment.

Another commenter urged VA to expand the scope of the proposed rule to include presumptive service connection for chronic peripheral neuropathy because of the lack of uniformity in the scientific literature.

NAS, in its 1996 report, assigned chronic peripheral neuropathy to a category labeled inadequate/insufficient evidence to determine whether an association exists. NAS defined that category as meaning that the available studies are of insufficient quality, consistency, or statistical strength to permit a conclusion regarding the presence or absence of an association with herbicide exposure. The studies reviewed by NAS suggested that the development of peripheral neuropathy can follow high levels of exposure to herbicides, and that peripheral neuropathy associated with herbicide exposure will manifest very soon after exposure. The trend to recovery reported and the negative findings of many long-term followup studies of peripheral neuropathy suggested that if such a neuropathy develops, it resolves with time. These findings are consistent with the findings of other studies that found no evidence of increased occurrence of chronic peripheral neuropathy after TCDD exposure. The Secretary determined that a positive association does not exist between herbicide exposure and the subsequent development of chronic peripheral neuropathy (See 61 FR 41446–47). Accordingly, VA takes no action based on this comment.

One commenter submitted analyses by two individuals contending there is an association between herbicide exposure and chronic peripheral neuropathy and stated that NAS did not consider these analyses.

The first of those analyses is contained in a February 19, 1992, letter from an environmental scientist with the United States Environmental Protection Agency (EPA) commenting on VA's January 1992 proposed rule to recognize an association between herbicide exposure and peripheral neuropathy becoming manifest within 10 years after exposure to herbicides containing dioxin. As noted above, the proposed rule was never finalized. The comment, among other things, disagreed with the proposal to limit the

recognized association to only those peripheral neuropathies becoming manifest within 10 years after exposure. The commenter asserted that neurotoxic damage, such as peripheral neuropathy, may not be clinically detectable for many years and that, therefore, peripheral neuropathy due to herbicide exposure may become manifest more than ten years after exposure. Although NAS apparently did not consider the February 19, 1992, letter to VA in its review of the medical and scientific literature, we note that the author of that letter presented testimony to NAS at the September 9, 1992, public meeting held by NAS prior to the issuance of its initial report. (Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam, 1993, Appendix B, B–10.). To that extent, this author's views have been called to the attention of NAS.

The second analysis submitted by the commenter is contained in a May 26, 1995, letter from a retired consultant in genetic toxicology to an American Legion official discussing the initial NAS report. The author of that letter stated that the methodology and analysis used by NAS was deficient in failing to give proper consideration to studies of toxicological effects in animals, failing to give proper consideration to clinical reports of individual cases involving herbicide exposure and its effects, and failing to address the synergistic effects of exposure to other substances, such as insecticides, disinfectants, solvents, and prescription drugs. The author further stated that peripheral neuropathy is strongly associated with human exposure to components of herbicides used in Vietnam, and that the author was personally aware of published clinical reports of 54 individuals who developed peripheral neuropathy shortly after exposure to 2,4–D.

Based on its review of numerous studies and case reports, NAS concluded that, although some case reports suggested that acute or subacute peripheral neuropathy can develop shortly after exposure to dioxin and related products, the most rigorously conducted studies argued against a relationship between dioxin or herbicides and chronic peripheral neuropathy. In view of the evidence that acute and subacute peripheral neuropathies resolve within a short time and the negative findings of the most rigorous long-term studies of herbicide exposure, VA has concluded that the evidence against an association between chronic peripheral neuropathy and herbicide exposure outweighs the evidence for such an association. The analyses submitted by the commenter do not alter that conclusion.

Although one of the analyses states that the effects of neurotoxic damage, such as peripheral neuropathy, may first become clinically detectable many years after exposure, the studies discussed by NAS, including followup studies conducted 15 and 30 years after exposure, generally showed no significant increase in peripheral neuropathy in the exposed populations. Further, although the other analysis referenced clinical reports of 54 individuals who developed peripheral neuropathy shortly after exposure to 2,4–D, that fact is consistent with the conclusion that acute and subacute peripheral neuropathy may develop shortly after exposure but does not demonstrate that chronic peripheral neuropathy is associated with herbicide exposure. The alleged methodological deficiencies in the 1993 NAS report also do not alter our conclusion. The 1996 NAS report discussed both animal studies and case reports, where relevant, in its review of the available scientific and medical literature. Further, NAS properly focused on the health effects of exposure to herbicides, as required by the Agent Orange Act of 1991, rather than on exposure to other substances.

This same commenter also forwarded a copy of a General Accounting Office (GAO) report concerning (1) the efforts of the Department of Health and Human Services' Centers for Disease Control (CDC) to study the effects of Agent Orange on the health of Vietnam veterans and (2) CDC's contracting and contract administration practices on contracts it awarded for the studies. Since this GAO report does not concern the NAS literature review or its recommendations regarding prostate cancer or peripheral neuropathy, we will not amend the proposed rule based on that report.

Another commenter said that in estimating the five-year benefit cost of this rulemaking, VA should consider that, in the case of retired military personnel, any increase in VA benefit payments is offset by a reduction in military retired pay.

When estimating the cost of a proposed rule, VA is determining the potential cost to VA rather than to the Federal Government as a whole. However, VA recognizes that the cost to the Government of expansion of entitlement to compensation based on herbicide exposure may be offset to some degree by a reduction in military retired pay because retired servicemembers cannot receive both benefits concurrently and must waive retired pay to receive compensation from VA.

The six-year benefit costs for prostate cancer based on herbicide exposure is $65.3 million, with an administrative cost of $959,000. Additionally, the medical care cost over six years is $38 million. Prostate cancer is a male genitourinary cancer that shows marked increased prevalence with age. Accordingly, costs beyond the six-year period would likely be substantially higher.

VA appreciates the comments submitted in response to the proposed rule which is now adopted without change; except that amendatory instruction # 2 is changed from the proposal to correct a typographical error.

Pursuant to the provisions of 38 U.S.C. 1116(c)(2), this final rule is made effective on the date of publication in the Federal Register.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. These amendments would not directly affect any small entities. Only claimants for VA benefits could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: October 29, 1996.

Jesse Brown,

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

## PART 3—ADJUDICATION

### Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

**§ 3.307 [Amended]**

2. In § 3.307, paragraph (a)(6)(ii) is amended by removing ''chloracne and''

and adding, in its place, ''chloracne,''; and by adding '', and acute and subacute peripheral neuropathy'' immediately following ''tarda''.

**§ 3.309 [Amended]**

3. In § 3.309, paragraph (e), the listing of diseases is amended by adding ''Acute and subacute peripheral neuropathy'' between ''Non-Hodgkin's lymphoma'' and ''Porphyria cutanea tarda''; by adding ''Prostate cancer'' between ''Porphyria cutanea tarda'' and ''Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)''.

4. Section 3.309, paragraph (e) is further amended by redesignating the Note as ''Note 1:''; and by adding ''Note 2:'' immediately following the last entry in note 1 to read as follows:

**§ 3.309 Disease subject to presumptive service connection.**

* * * * *

(e) * * *

Note 2: For purposes of this section, the term *acute and subacute peripheral neuropathy* means transient peripheral neuropathy that appears within weeks or months of exposure to an herbicide agent and resolves within two years of the date of onset.

[FR Doc. 96–28683 Filed 11–6–96; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 70

**[NY001; FRL–5646–7]**

## Clean Air Act Final Interim Approval of Operating Permits Program; New York

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final interim approval.

**SUMMARY:** The EPA is promulgating final interim approval of the operating permits program that the State of New York (NY) submitted in accordance with Title V of the Clean Air Act (the Act) and its implementing regulations codified at Part 70 of Title 40 of the Code of Federal Regulations (40 CFR Part 70). This approved interim program allows NY to issue operating permits to all major stationary sources, and to certain other sources, for a period of two years, at which time the interim program must be replaced by a fully approved program.

**EFFECTIVE DATE:** This interim program will be effective December 9, 1996.

**ADDRESSES:** Copies of NY's submittal and other supporting information used in developing the final interim approval as well as the Technical Support Document are available for inspection, during normal business hours, at the following location: U.S. Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, NY 10007–1866; Attention: Steven C. Riva.

**FOR FURTHER INFORMATION CONTACT:** Gerald P. DeGaetano, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, at the above EPA Office, or at telephone number (212) 637–4020.

**SUPPLEMENTARY INFORMATION:**

I. Background and Purpose

The Act and its implementing regulations at 40 CFR Part 70 require that States develop and submit operating permit programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving a complete submittal. The EPA reviews State programs pursuant to Section 502 of the Act and the Part 70 regulations, which together outline the criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of 40 CFR Part 70, EPA may grant the program interim approval for a period of up to two years. If a State does not have an approved program by the end of an interim program, EPA must establish and implement a federal operating permits program for that State.

On July 30, 1996, EPA proposed interim approval of the operating permits program submitted by NY (see 61 FR 39617). In that Federal Register document, EPA indicated that NY was in the process of re-proposing Appendix B of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 201 (Appendix B is entitled, ''Transition Plan Application Schedule''), and that such would be finalized prior to EPA's final interim approval of the NY program. Subsequently, Appendix B was adopted by NY on September 11, 1996, and became effective 30-days from that date, on October 11, 1996.

During the 30-day public comment period that ended on August 29, 1996, two comment letters were received on the aforementioned EPA proposal to grant NY interim program approval. One comment letter supported the State program, and the other letter provided a number of comments and concerns and asked that these be addressed. A response to all of the pertinent comments received is included in Section II.B. of this notice. Based upon EPA's review, none of the comments received alters EPA's decision to approve the NY program. Therefore, in this notice, the EPA is taking final action to promulgate interim approval of the NY Operating Permits Program.

II. Final Action and Implications

*A. Analysis of State Submission*

On July 30, 1996, the EPA proposed interim approval of NY's Title V Operating Permits Program. The program elements discussed in the proposed notice are unchanged, except for Appendix B of 6 NYCRR Part 201, discussed above. EPA's position remains unchanged, in that the NY program substantially meets the requirements of 40 CFR Part 70.

*B. Response to Public Comments*

1. Comments From the Society of Plastics Industry, Inc.

In this letter, dated August 27, 1996, the commenter supports NY's efforts to implement an operating permits program. In addition, the commenter requested that EPA finalize its August 1994 and August 1995 proposals (to 40 CFR Part 70), to allow the State to quickly receive final program approval.

*Response.* In the July 30, 1996 Federal Register Notice, EPA listed eight items that NY must correct in order for EPA to grant full (rather than interim) program approval to the State. Under 5 of these 8 items, it was noted that EPA had proposed revisions to 40 CFR Part 70 on August 29, 1994 and August 31, 1995 which, if such revisions were to be promulgated as proposed, would eliminate these 5 issues from being a barrier to full program approval for NY. That is, NY would not have to revise its regulations for these 5 issues to receive full program approval. However, NY will still be required to revise its regulations with respect to the other 3 issues (refer to Section II.C., below, for additional discussion on this matter).

EPA is required to grant or deny Title V program approval based on current requirements. At present, these requirements are those listed in the 40 CFR Part 70 regulations promulgated on July 21, 1992. Unless and until these regulations are revised, the July 21, 1992 version will be applied to determine a State program's approvability. Also, if future revisions to 40 CFR Part 70 do not address the ''Interim Program Approval'' items noted in EPA's July 30, 1996 Federal Register Notice, then New York State must correct those items as described therein, in order to be granted full program approval.

2. Comments From the Consumer Policy Institute

This letter, dated August 29, 1996, provided a number of comments on

EPA's proposed interim operating permits program approval to NY (this included specific comments to EPA Region 2 on its proposed approval of NY's program, and an attachment with comments that were previously provided to NY during the State's public comment period relative to revisions to regulations codified at 6 NYCRR Parts 200, 201 and 621). In today's Notice, EPA will address each of the comments made by the Consumer Policy Institute in its August 29th submittal that pertains to the subject Title V program. However, a number of other comments in this letter and attachment relate solely to how changes to NY's permitting rules impact the State Implementation Plan (SIP). Approval of the Title V permitting program does not revise any SIP requirements. Therefore, these SIP-related comments will not be addressed in this Notice, but will be deferred until such time as EPA processes the State's rule changes as a SIP revision.

a. *Public Review.* The commenter states that the public never received the permit application forms or the compliance tracking and enforcement program description during the comment period, and that a chart of SIP-applicable requirements (for use by Title V-affected sources to ensure that applications list all SIP-applicable requirements) was still being prepared by NY.

*Response.* As was noted in the July 30, 1996 Federal Register, which commenced the public comment period, copies of the State's Title V operating permits program submittal and other supporting information are available for inspection during normal business hours at the EPA Region 2 Office and the New York State Department of Environmental Conservation (NYSDEC) Central Office, located in Albany, New York. This available documentation included both the permit application forms, as well as the compliance and enforcement program description. In addition, the July 30th Notice listed two EPA Region 2 representatives that could be contacted for additional information. During the 30-day public comment period, Region 2 personnel did not receive any calls from the public requesting to visit the EPA Office to review this documentation, or requesting that copies be provided.

With respect to the compilation of a chart of SIP-applicable requirements, while the EPA agrees that such a document will be a valuable guide for applicants, preparation of the subject chart is not a criterion of approval for a State Title V program. Therefore, lack of a final SIP chart will not affect EPA's determination on final program approval.

b. *Fee Demonstration.* The commenter states that the purpose of the fee demonstration is to show that adequate resources will be available to carry out the Title V program. However, the NYSDEC (the permitting authority in NY) and, specifically, its Air Division, has lost large numbers of employees. EPA was questioned as to whether the State's fee demonstration identifies the resources for program implementation, and whether fees are being spent where intended, or are being funneled elsewhere. It was requested that State staff that will work on this program be identified by name and technical qualifications.

*Response.* Based upon the EPA's review of NY's fee demonstration, it has been determined that the State has the authority to collect sufficient fees to implement its Title V program. As noted in the July 30, 1996 Federal Register Notice, NY's fee demonstration shows that the State will collect the equivalent of EPA's ''presumptive minimum'' fee amount. As such, as delineated at 40 CFR § 70.9, a detailed analysis showing staffing and qualifications was not required. EPA has determined that the fees collected will enable NY to adequately implement the operating permits program. This will be certified through EPA's ongoing program audit of permitting activities, and the review by EPA of State-prepared, annual program cost documentation.

c. *Definition of Source.* The commenter states that NY does not define ''source'' as that term is defined in the Act. Instead, the State regulates by 'emission-point,' and this difference between the State regulations and 40 CFR Part 70 would allow sources to avoid Title V permitting via emissions ''capping'' of one or more emission units.

*Response.* First, it must be noted that NY's definition of source is consistent with that of the Act (see 6 NYCRR Part 201–2(b)(21)). In addition, the rules promulgated at 6 NYCRR Part 201–6 are consistent with the requirements of 40 CFR Part 70, in that all major stationary sources of air pollution will need to apply for and obtain a Title V operating permit. However, major sources may wish to restrict their operations by accepting federally enforceable permit restrictions, so as to escape from the purview of Title V, and may do so by establishing such federally enforceable limits in accordance with the State rules promulgated at 6 NYCRR Part 201–7 (that is, such sources would become ''synthetic'' minor sources). These procedures are acceptable in accordance with the operating permit program requirements delineated at 40 CFR Part 70 and, as such, do not affect EPA's determination to grant NY interim program approval.

d. *Permitting of Dry Cleaners.* The commenter asserts that New York should have made a provision for permitting non-major area source dry cleaners.

*Response.* With respect to non-major sources regulated under section 112 of the Act after July 21, 1992, 40 CFR Part 70 provides that permitting requirements will be determined at the time that the new standard is promulgated. However, for dry cleaners and numerous other non-major sources regulated under section 112, EPA promulgated regulations deferring the Title V permitting of such sources until December, 1999 (see 61 FR 27785, dated June 3, 1996). Prior to that point in time, EPA will determine whether permanent exemptions to Title V permitting should be established.

e. *Two-Phased Application.* The commenter asserts that use of a two-phased application system by NYSDEC during its 3-year transition period will impact the public's right to review complete applications and participate in enforcement activities. In addition, the commenter states that the plan provides for permit shield protection based only on Phase I submittals.

*Response.* A two-phased application system, such as the one established by NY, is discussed in EPA's first ''White Paper,'' dated July 10, 1995. This guidance document provides that permitting authorities have considerable flexibility in initially processing the large amount of applications over a 3-year period, and determining application completeness pursuant to 40 CFR § 70.5(c). It further discusses the need to balance the receipt of information to support timely permit issuance versus the workload associated with managing and updating the initially submitted information. The White Paper allows that permitting authorities may implement a two-phased permit application process during the transition period, first providing for submittal of an administratively complete application and followed, at the appropriate time, with a complete application that will ensure issuance of a draft Title V permit. Furthermore, this EPA guidance document states that permitting authorities must award the application shield if the source submits a timely application pursuant to 40 CFR § 70.5(c).

The Phase I application requirement developed by NY for use during its

transition period meets the minimum information submittal requirements delineated at 40 CFR Part 70 and EPA's White Paper. It should be noted, however, that not all Title V-affected sources will need to file a Phase I application. If a source is required, pursuant to NY's transition plan, to apply during the first year after program approval, then only the Phase II application need be submitted. The Phase I application is only to be used by those sources whose permit applications are due subsequent to the first year after program approval.

Finally, it should be noted that an application shield (see 40 CFR §§ 70.5(a)(2) and 70.7(b)) should not be confused with a permit shield (see 40 CFR § 70.6(f)). An application shield provides, in general, that if an affected source submits a timely and complete Title V application, then that source's failure to have a valid permit is not a violation of the operating permits program. A permit shield provides, in general, that a source's compliance with the conditions of its permit constitutes compliance with any applicable requirements as of the date of permit issuance.

f. *Professional Engineers Certification*. The commenter believes that NYSDEC should retain the former requirement that permit application submittals be certified by a licensed professional engineer, in addition to the requirement of certification by a responsible official, to ensure the quality and accuracy of the information submitted.

*Response.* The requirement for a professional engineer's certification is discretionary on the part of the permitting authority. Lack of such a requirement in a Title V program is not an issue relating to program approval.

g. *Incorporation of ''State-only'' Requirements*. The commenter opposes a provision in 6 NYCRR Part 201–6.6(a)(2), which allows a source to delay incorporating State-only requirements into its Title V permit until the expiration of an existing State permit held by the source, if the State permit contains solely State-only requirements.

*Response.* This section of NY's rules does not affect the requirement of 40 CFR Part 70 that a Title V operating permit must include all ''applicable requirements'' (State-only requirements are not ''applicable requirements'' and, as such, do not fall under the purview of EPA review of Title V program approvability). Because EPA cannot base its review for approvability of State program submittals on criteria not required by Part 70, this comment will not change EPA's decision to approve the NY program on an interim basis.

h. *Special Treatment Under 201–6.3(c)*. The commenter poses a question as to which sources are being afforded ''special treatment,'' as defined at 6 NYCRR Part 201–6.3(c), during the transition period, and what is the meaning of, and justification for, such treatment. [Specifically, this provision states that the 18-month timeframe for permit issuance does not apply to Title V applications that are afforded special expedited review during the transition period.]

*Response.* The purpose of this NY State provision is to differentiate between initial permit issuance (i.e., permits issued during the 3-year transition period) and all permits issued thereafter. In accordance with the requirements of Title V, all permits must be issued within 18-months of receipt of a complete application (see 40 CFR § 70.7(a)(2)), with the exception of those permits issued during the transition period. During this transition period, Part 70 provides for initial permit issuance over a 3-year period from the date the program becomes effective, with approximately one third of the total number of permits issued each year (see 40 CFR § 70.4(b)(11)). This reflects the ''special treatment'' that NY is affording sources during the transition period; as such, this State provision conforms to the requirements of Title V and 40 CFR Part 70.

i. *Public Review When NY is an ''Affected State''*. The commenter states that the NYSDEC has not made any plans to notify the affected public when NY receives notice of a permitting action from an adjacent State. The commenter further suggests that, in these situations, NY request that the adjacent State publish a notice of the permitting action in a widely circulated newspaper.

*Response.* Title V and 40 CFR Part 70 only require that permitting authorities notify other affected States of permitting actions. Although there is no requirement to provide public notification in another State, oftentimes, the public notice for the permitting action being processed in the adjacent State will be circulated over the State boundaries into the ''affected'' State (i.e., newspaper circulation, if that is the method used, usually crosses State lines). It should also be noted that, in accordance with the provisions of 40 CFR 70.7(h)(1), anyone can request to be placed on the mailing list (i.e., a list of ''interested persons'') developed for the operating permits program by the permitting authority, and such a request can be made to any permitting authority. In any case, the public notification and participation procedures implemented under NY's program meet the requirements of Title V.

j. *Exempt and Trivial Activities*. The commenter requested that NYSDEC provide scientific analysis that supports the identification in 6 NYCRR Part 201–3 of exempt and trivial activities. The commenter further notes that these regulations include exemptions entirely new to Part 201, and activities not provided for in EPA's ''White Paper.''

*Response.* Exempt and trivial activities are allowed for under the Title V program, and are expounded upon in EPA's first White Paper. During its review of the NY program, EPA reviewed the State's list of exempt and trivial activities and determined that the lists comply with the requirements and general intent of the provisions of the Title V program. This list can only be revised by NY through the rulemaking process. With respect to the listing of trivial activities provided in EPA's White Paper, it was noted therein that this was not an all-inclusive, comprehensive list, but a ''starting-point'' that permitting authorities can supplement in their own programs. In addition, there exists a ''gatekeeper'' for these listed activities in NY's rule that precludes any of the activities listed from being considered as exempt or trivial if such activities are subject to an applicable requirement. EPA's review, together with this gatekeeper, are sufficient to determine that the NY program is approvable with respect to this issue.

k. *Insignificant Emission Levels*. The commenter requested that NYSDEC provide scientific analysis that supports the listing of insignificant emission levels at 6 NYCRR Part 201–6.3(d)(7).

*Response.* The insignificant emission levels established by NY at 6 NYCRR Part 201–6.3(d)(7) conform to National EPA guidance on establishing such levels and, as such, are approvable.

l. *Operational Flexibility*. The commenter states that NYSDEC should, under the operational flexibility provisions of 6 NYCRR Part 201–6.5, prohibit the trading of toxic air pollutants, or trading that would directly effect exposing employees to higher concentrations of a particular pollutant.

*Response.* Operational flexibility, such as the flexibility delineated under NY's program at 6 NYCRR Parts 201–6.5(f) (3) and (4), is provided for by the Title V program. Specifically, 40 CFR §70.4(b)(12)(iii), which corresponds to NY's regulations at 6 NYCRR Part 201–6.5(f)(4), allows for the trading of any regulated pollutant, as long as no applicable requirements are

contravened. The NY program includes such a gatekeeper. Trading of toxic air pollutants cannot normally be achieved via the provision listed at 6 NYCRR Part 201–6.5(f)(3), because this provision only allows trades to occur if such trades are allowed by the SIP.

m. *Operational Flexibility Protocol.* The commenter requested that NYSDEC drop the provision at 6 NYCRR Part 201–6.5(f)(2), which allows an applicant to propose incorporation of a protocol to evaluate changes for compliance with applicable requirements. Descriptions or definitions relating to such protocols or their approval procedures are not contained in Part 201.

*Response.* This provision in NY's rule is an additional provision that the State has incorporated into its program. It is not specifically addressed in 40 CFR Part 70, nor is it precluded by those federal regulations. NY would have to set the procedures for approval of such protocols as part of the program implementation.

*C. Final Action*

The EPA is promulgating interim approval of the operating permits program submitted by NY on November 12, 1993, as supplemented on June 17, 1996, and June 27, 1996. Among other things, the State has demonstrated that the program substantially meets the minimum requirements for an interim State operating permits program as specified in 40 CFR Part 70, and as discussed in EPA's Guidance entitled ''Interim Title V Program Approvals'' issued by John S. Seitz, Director, Office of Air Quality Planning and Standards on August 2, 1993. This interim approval, which may not be renewed, extends until December 7, 1998. Under the approved interim operating permits program, NY may issue operating permits pursuant to Title V of the Act to all major stationary sources, and to certain other sources, for the duration of this approval. During this interim approval period, the State is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in NY. Permits issued under a program with interim approval have full standing with respect to Part 70, and the one-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing initial permit applications. In order to ensure that a fully approved program will be in place by the expiration date of the interim approval, NY must submit a modified program to EPA by June 8, 1998 that addresses the following deficiencies (for additional discussion of these deficiencies, refer to the July 30, 1996 Federal Register document, 61 FR 39617):

1. Regulated Air Pollutant

NY's definition of 'Regulated Air Pollutant' in 6 NYCRR Part 200.1(bq) must be changed to be made consistent with the definition in 40 CFR 70.2 (unless, as described in the above-cited Federal Register document, the Part 70 regulations are revised in a way that would make this NY provision acceptable, prior to the time that NY State's full program submittal is due). The definition in 40 CFR part 70 currently includes: ''any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act, including sections 112 (g), (j), and (r) of the Act * * *''. NY's definition of regulated air pollutant only includes hazardous air pollutants, which the State defines by providing a list of the 112(b) pollutants. Therefore, NY must include in its definition not only the section 112(b) hazardous air pollutants, but also pollutants regulated under section 112(r) of the Act.

2. Enforcement Discretion

NY must revise its rules at 6 NYCRR 201–6.5(c)(3)(ii) to clarify that the discretion to excuse a violation under 6 NYCRR Part 201–1.4 will not extend to federal requirements, unless the specific federal requirement provides for affirmative defense during start-ups, shutdowns, malfunctions, or upsets.

3. Alternative Emission Limits

NY must change its provision at 6 NYCRR Part 201–6.5(a)(1)(ii), so that it is equivalent to 40 CFR 70.6(a)(1)(iii). That is, the State provision should be revised to require that permits will only include alternative emission limitations if provided for in the SIP and if the alternative emission limit is determined to be equivalent to the limit contained in the SIP.

4. Operational Flexibility

NY must add to its program the operational flexibility provisions provided for by section 502(b)(10) of the Act. However, as discussed in the above-cited Federal Register document, NY may not need to make such changes if revisions to 40 CFR Part 70 are promulgated prior to NY's full program submittal, and such Part 70 revisions would not require the State to provide for this type of operational flexibility.

5. Definition of Major Source

NY must revise its definition of major source to be consistent with the definition in 40 CFR part 70, as it relates to accounting for fugitive emissions to determine the applicability of section 111 sources. As noted in the July 30, 1996 Federal Register document, this NY definition need not be revised if the Part 70 regulations are changed in a way that would make this NY provision acceptable, and such change occurs prior to the time that NY State's full program submittal is due.

6. Emissions Trading

NY must include the two gatekeepers listed in 40 CFR 70.4(b)(12) in its regulations at 6 NYCRR Parts 201–6.5 (f)(3) and (f)(4). Specifically, NY must add to its rule at 6 NYCRR Part 201–6.5(f)(3) the gatekeeper which states that changes under this provision do not need to undergo a permit revision as long as the changes are not modifications under any provision of Title I of the Act. In addition, NY must supplement its rule at 6 NYCRR Part 201–6.5(f)(4) by adding the two gatekeepers of 40 CFR 70.4(b)(12) which state that changes do not need to undergo a permit revision as long as the changes are not modifications under any provision of Title I of the Act and the changes do not exceed the emissions allowable under the permit.

7. Minor Permit Modification Procedures

New York must revise its rule at 6 NYCRR Part 201–6.7(c)(2) to provide that minor modification procedures can only be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches ''to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA'' (the language in quotations must be added). This change must be made unless revisions to 40 CFR part 70 are promulgated prior to NY's full program submittal, and such revisions would exclude this issue from affecting full program approval.

8. Petitions for Judicial Review

In order for NY to be consistent with 40 CFR part 70 and receive full program approval, the State must adopt a 90 day statute of limitations, through rulemaking, for judicial review of final permit actions, rather than its current 120-day review period. As discussed in the July 30, 1996 Federal Register document, this change may not be

required if the regulations at 40 CFR Part 70 are revised in a way that would make this NY provision acceptable, and such a revision would occur prior to the time that NY State's full program submittal is due.

If NY fails to submit a complete corrective program for full approval by June 8, 1998, EPA will start an 18-month clock for mandatory sanctions. If the State then fails to submit a complete corrective program before the expiration of that 18-month period, EPA will apply sanctions as required by section 502(d)(2) of the Act, which will remain in effect until EPA determines that NY has corrected the deficiencies by submitting a complete corrective program.

If EPA disapproves NY's complete corrective program, EPA will apply sanctions as required by Section 502(d)(2) on the date 18 months after the effective date of the disapproval unless, prior to that date, NY has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if NY has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the NY program by the expiration of this interim approval, EPA must promulgate, administer and enforce a federal operating permits program for the State upon interim approval expiration.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of Section 112 standards as promulgated by the EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, an expeditious compliance schedule, and adequate enforcement ability, which are also requirements under 40 CFR part 70. In a letter dated June 18, 1996, NY requested delegation through section 112(l) of all existing section 112 standards for both Part 70 sources and those not subject to the Part 70 requirements and infrastructure programs, with the following exceptions. NY does not intend to take delegation of either the section 112(r) program or the National Emission Standards for Hazardous Air Pollutants for Asbestos, Standards for Demolition and Renovation; however, the State will still implement the appropriate permit conditions relevant to the risk management program in part 70 permits. With respect to future 112 standards, the State intends to accept delegation of most, if not all, of the standards. This will be accomplished either through incorporation by reference of the federal regulations into State regulations, as expeditiously as possible, or via case-by-case program substitution. In the June 18, 1996 letter, NY demonstrated that it has sufficient legal authorities, adequate resources, and adequate enforcement ability for implementation of Section 112 of the Act for all Part 70 sources. Therefore, the EPA is also promulgating interim approval under Section 112(l)(5) and 40 CFR 63.91 to grant NY approval for its program mechanism for receiving delegation of all existing and future Section 112(d) standards for all Part 70 sources, and Section 112 infrastructure programs that are unchanged from federal rules as promulgated.

In its June 18, 1996 letter, NY also requested delegation of all existing New Source Performance Standards promulgated pursuant to Section 111 of the Act, except for 40 CFR part 60, subpart AAA, Standards of Performance for New Residential Wood Heaters. While EPA proposed to approve this request in the July 30, 1996 Federal Register document, we are deferring a final decision on this matter until a later date.

## III. Administrative Requirements

### *A. Docket*

Copies of the NY submittal and other information relied upon for the final interim approval, including the public comments received and reviewed by EPA on the proposal, are contained in the docket maintained at the EPA Region 2 Office. The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

### *B. Executive Order 12866*

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

### *C. Regulatory Flexibility Act*

The EPA's actions under Section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy 40 CFR Part 70. Since these operating permits programs were already adopted at the State level, and today's action does not introduce any additional requirements that are new to the State program already in effect, no significant impact on a substantial number of small entities is expected to occur as a result of today's action. Therefore, I certify that this rule will not have a significant impact on a substantial number of small entities.

### *D. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 of the Unfunded Mandates Act requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### *E. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 70

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: October 22, 1996.

William J. Muszynski,

*Acting Regional Administrator.*

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

## PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for New York in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permit Programs

* * * * *

*New York*

(a) The New York State Department of Environmental Conservation submitted an operating permits program on November 12, 1993, supplemented on June 17, 1996 and June 27, 1996; interim program approval effective on May 7, 1999; interim program approval expires December 7, 1998.

(b) [Reserved]

* * * * *

[FR Doc. 96–28539 Filed 11–6–96; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 300

**[FRL–5646–1]**

## National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of partial deletion of the Harbor Island Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 10 announces the deletion of a portion of the Harbor Island Superfund Site, located in Seattle, King County, from the National Priorities List (NPL). The portion of the site to be deleted is the Lockheed Shipyard Operable Unit (OU). The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA and the State of Washington Department of Ecology (Ecology) have determined that no further cleanup under CERCLA is required and that the selected remedy has been protective of public health, welfare, and the environment.

**EFFECTIVE DATE:** November 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Keith Rose, Remedial Project Manager, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, ECL–111, Seattle, WA 98101, (206) 553–7721.

**SUPPLEMENTARY INFORMATION:** The site to be partially deleted from the NPL is:

The Harbor Island Site located in Seattle, King County, Washington.

This partial deletion pertains only to the Lockheed Shipyard OU, which is known as OU No. 3. The Lockheed Shipyard OU is located at 2929 16th Avenue Southwest, and is bounded on the north by the ARCO petroleum storage tank facility, on the east by 16th Avenue Southwest, on the south by the Fisher Mills facility, and on the west by the West Waterway of the Duwamish River. This partial deletion pertains only to OU No. 3 of the Harbor Island site. Response activities at OU Nos. 1, 2, 4, and 5 of this Site are not yet complete and these Ous will remain on the National Priorities List and are not subject of this partial deletion.

This partial deletion is in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, 60 FR 55466 (Nov. 1, 1995). A Notice of Intent for Partial Deletion was published September 5, 1996, (61 FR 46749). The closing date for comments on the Notice of Intent to Delete was October 7, 1996. EPA did not receive any comments on the proposed partial deletion and has not prepared a Responsiveness Summary.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site, or portion of a site, deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425 of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control.

Dated: October 25, 1996.

Chuck Clarke,

*Regional Administrator, U.S. Environmental Protection Agency, Region 10.*

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

## PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by revising the entry for Harbor Island (lead), Seattle, Washington, to read as follows:

TABLE 1.—GENERAL SUPERFUND SECTION

| State | Site name | City/county | Notes |
|---|---|---|---|
| * | * | * | * |
| WA | Harbor Island | Seattle/King County | P |
| * | * | * | * |

P=Sites with partial deletion(s).

[FR Doc. 96–28429 Filed 11–6–96; 8:45 am]

BILLING CODE 6560–50–P

# Proposed Rules

Federal Register
Vol. 61, No. 217
Thursday, November 7, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 400

**RIN 0563–AB05**

### General Administrative Regulations; Nonstandard Underwriting Classification System

**AGENCY:** Federal Crop Insurance Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** Federal Crop Insurance Corporation (FCIC) proposes to amend subpart O of the General Administrative Regulations, effective with the 1998 (1999 for Texas and Arizona/California Citrus) and succeeding crop years. This proposed amendment is intended to clarify the effect of the Nonstandard Underwriting Classification System (NCS) and to ensure that NCS is applied to all producers in a fair and consistent manner.

**DATES:** Written comments, data, and opinions on this proposed rule will be accepted until close of business January 6, 1997, and will be considered when the rule is to be made final. The comment period for information collection under the Paperwork Reduction Act of 1995 continues through January 6, 1997.

**ADDRESSES:** Written comments, data, and opinions on this proposed rule should be sent to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, USDA, 14th and Independence Avenue, SW., Washington, DC, 8:15 a.m.–4:45 p.m., est, Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Bill Smith, Supervisory Insurance Management Specialist, Research and Development Division, Product Development Branch, FCIC, at the Kansas City, MO address listed above, telephone (816) 926–7743.

**SUPPLEMENTARY INFORMATION:**

Executive Order 12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order 12866 and Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 1, 2000.

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Regulatory Flexibility Act

NCS program determinations are applied equally on a county basis and affect only a small number to insureds (approximately 1 percent of all insureds). This regulation will not have a significant impact on a substantial number of small entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before judicial action may be brought.

Environmental Evaluation

This action is not expected to have any significant impact on the quality of the human environment, health, and

safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

The regulatory action is being taken as part of the National Performance Review Program to eliminate unnecessary regulations and improve those that remain in force.

Background

FCIC proposes to amend the General Administrative Regulations (7 CFR part 400, subpart O) effective for the 1998 (1999 for Texas and Arizona/California Citrus) and succeeding crop years. The principal changes to the provisions are as follows:

1. Section 400.302—Clarify the definitions of ''actively engaged in farming'' and ''insurance experience;'' rename the term ''base period,'' as ''NCS base period'' and clarify the definition; and add definitions for ''earned premium'' and ''indemnified loss''.

2. Section 400.303—In paragraph (a), expand the nonstandard classification selection criteria by adding several new criteria to assist efforts to identify those producers whose potential adverse impact on insurance program performance is greatest. Specify that the minimum standards provided in this subsection may be different in a specific county if that county's insurance experience is substantially different from the insurance experience for which the criteria were determined. Add paragraph (c) to describe adjustments which may be made to insurance experience due to widespread adverse weather conditions and other causes.

3. Section 400.305, paragraph (c)—Permit nonstandard classifications for persons, land, and any combination thereof to be assigned on a crop or crop practice, type, varietal, or crop option basis.

4. Section 400.307—Clarify that nonstandard classifications for persons, or persons on identified land will be discontinued in the case of the person's death or if the person has discontinued farming. In such cases, insurance experience will not change, so there is no administrative reason to continue to annually review these listings. FCIC will determine whether the person has ''discontinued farming'' by determining that all present and future potential for farming has ceased, e.g., sold all cropland and means of crop production. If the person begins farming again, or acquires a substantial beneficial interest in any farming operation, the nonstandard classification will be reinstated.

5. Section 400.309, paragraph (a) is revised to change the deadline for submitting reconsiderations from 45 days to 30 days to be consistent with appeal regulations a 7 CFR parts 11 and 780. Paragraphs (e) and (f) are deleted because regulations for filing an appeal are provided in 7 CFR parts 11 and 780.

List of Subjects in 7 CFR Part 400

Crop insurance; Nonstandard Underwriting Classification System.

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) the Federal Crop Insurance Corporation proposes to amend 7 CFR part 400, subpart O, effective for the 1998 (1999 for Texas and Arizona/California Citrus) and succeeding crop years, as follows:

## PART 400—[AMENDED]

## Subpart O—Nonstandard Underwriting Classification System

1. The authority citation for 7 CFR part 400, subpart O, is revised to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. In § 400.302, remove all paragraph designations and the definition of ''base period;'' the definition of ''actively engaged in farming'' and ''insurance experience'' are revised; and definitions of ''earned premium,'' ''indemnified loss,'' and ''NCS base period'' are added to read as follows:

### § 400.302 Definitions.

*Actively engaged in farming*—means a person who, in return for a share of profits and losses, makes a significant contribution to the production of an insurable crop in the form of capital, equipment, land, personal labor, or personal management.

*Earned premium*—means premium earned (both the amount subsidized and the amount paid by the producer, but excluding any amount of the subsidy attributed to the operating and administrative expenses of the insurance provider) for a crop under a policy insured or reinsured by the Corporation.

*Indemnified loss*—means a loss applicable for the policy for any year during the NCS base period for which the total adjusted indemnity exceeds the total earned premium. If the person has insurance for the crop in more than one county for any crop year, indemnities and premiums will be accumulated for all counties for each crop year to determine an indemnified loss.

*Insurance experience*—means earned premiums, indemnities paid (after applicable adjustments), and other data for the crop (but not including replant payments), resulting from all of the insured's crop insurance policies insured or reinsured by the Corporation for one or more crop years and will include all information from all counties in which the person was insured.

*NCS base period*—means the 10 consecutive crop years (as defined in the crop policy) ending 1 crop year prior to the crop year in which the NCS classification becomes effective for all crops except Arizona, California and Texas citrus (production) and sugarcane. For these excepted crops, the NCS base period means the 10 consecutive crop years ending 2 crop years prior to the crop year in which the NCS classification becomes effective. For example: An NCS classification effective for the 1996 crop year against a producer of citrus production in Arizona, California, and Texas, and sugarcane would have a NCS base period that includes the 1984 through 1993 crop years. An NCS classification effective for the 1996 crop year against a producer of all other crops would have a NCS base period that includes the 1985 through 1994 crop years.

3. Section 400.303 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

### § 400.303 Initial selection criteria.

(a) Nonstandard Classification procedures in this subpart initially apply when all of the following insurance experience criteria (see paragraph (c) of this section) for the crop have been met:

(1) Three or more indemnified losses during the NCS base period;

(2) Cumulative indemnities in the NCS base period that exceed cumulative premiums during the same period by at least $500.00;

(3) A premium has been earned in at least 1 of the most recent 4 crop years in the NCS base period;

(4) The result of dividing the number of indemnified losses during the NCS base period by the number of years premium is earned for that period equals .30 or greater; and

(5) Either of the following apply:

(i) The natural logarithm of the cumulative earned premium rate multiplied by the square root of the cumulative loss ratio equals 2.00 or greater; or

(ii) Five (5) or more indemnified losses have occurred during the NCS base period and the cumulative loss ratio equals or exceeds 1.50. The minimum standards provided in paragraphs (a)(2), (3), (4), and (5) of this

section may be increased in a specific county if that county's overall insurance experience for the crop is substantially different from the insurance experience for which the criteria was determined. The increased standard will apply until the conditions requiring the increase no longer apply. Any change in the standards will be contained in the Special Provisions for the crop.

* * * * *

(c) Insurance experience for the crop may be adjusted, by county and crop year, to discount the effect of indemnities caused by widespread adverse growing conditions. Adjustments are determined as follows:

(1) Determine the average yield for the county using the annual county crop yields for the previous 20 crop years, unless such data is not available;

(2) Determine the normal variability in the average yield for the county, expressed as the standard deviation;

(3) Subtract the result of paragraph (c)(2) from paragraph (c)(1);

(4) Divide the annual crop yield for the county for each crop year in the NCS base period by the result of paragraph (c)(3), the result of which may not exceed 1.0;

(5) Subtract the result of paragraph (c)(4) for each crop year from 1.0;

(6) Multiply the result of paragraph (c)(5) by the liability for the crop year; and

(7) Subtract the result of paragraph (c)(6) from any indemnity for that crop year. FCIC may substitute the crop yields of a comparable crop in determining paragraphs (c) (1) and (2), or may adjust the average yield or the measurement of normal variability for the county crop, or any combination thereof, to account for trends or unusual variations in production of the county crop or if the availability of yield and loss data for the county crop is limited. Alternate methods of determining the effects of adverse growing conditions on insurance experience may be implemented by FCIC if allowed in the Special Provisions.

4. Section 400.305 is amended by revising the introductory text of paragraph (c) to read as follows:

**§ 400.305 Assignment of Nonstandard Classification.**

* * * * *

(c) A Nonstandard Classification may be assigned to identified insurable acreage; a person; or to a combination of person and identified acreage for a crop or crop practice, type, variety, or crop option or amendment whereby:

* * * * *

5. Section 400.307 is amended by adding two sentences at the end thereof to read as follows:

**§ 400.307 Discontinuance of participation.**

* * * * *

A Nonstandard Classification will no longer be applicable to the person or the person on identified acreage if the Corporation determines the person is deceased or has discontinued all farming operations for all crops, such as the legitimate sale of the farming operation to a disinterested person. If the person who discontinues all crop farming operations later returns to farming or obtains a substantial beneficial interest in a farming operation, the nonstandard classification will be reinstated.

6. In § 400.309, paragraph (a) is amended by revising the phrase ''45 days'' to read ''30 days'' and paragraphs (e) and (f) are removed.

Signed in Washington, D.C., on October 31, 1996.

Kenneth D. Ackerman,

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 96–28608 Filed 11–6–96; 8:45 am]

BILLING CODE 3410–FA–P

## DEPARTMENT OF THE TREASURY

## Bureau of Alcohol, Tobacco and Firearms

## 27 CFR Parts 5 and 7

**[Notice No. 844]**

**RIN 1512–AB50**

## Use of Distilled Spirits Terms in Labeling and Advertising of Malt Beverages; Use of the Term ''Margarita'' in Labeling Distilled Spirits

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Notice of petition.

**SUMMARY:** Heublein, Inc. (Heublein), a distilled spirits producer, has petitioned ATF to issue new rules relating to the labeling and advertising of distilled spirits and malt beverage products. ATF administers the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. §§ 205(e) and (f), which prohibits false and misleading statements on labels and in advertising of beverage alcohol. Specifically, Heublein has petitioned ATF to issue new rules to prohibit (1) the use of terms in the labeling of malt beverages which are the names of products customarily made with a distilled spirits base, (2) the labeling and advertising of a malt beverage in such a manner as to create the impression that it contains or is comparable to a distilled spirits product, and (3) the use of the term ''Margarita,'' or any other word commonly associated with tequila and Mexico, as a designation of any distilled spirits product which does not contain tequila.

ATF has approved labels for malt-based alcohol beverages that use cocktail names such as ''Margarita'' provided the label clearly identifies the product as a malt beverage. The purpose of this notice is to provide the public with an opportunity to comment on the additional safeguards that Heublein believes are necessary in order to prevent consumers from being misled about the composition of these malt-based alcohol beverage products.

**DATES:** Written comments must be received by February 5, 1997.

**ADDRESSES:** Send written comments to: Chief, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221; Notice No. 844. Comments not exceeding three pages may be submitted by facsimile transmission to (202) 927–8602. Copies of written comments to this notice will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6300, 650 Massachusetts Avenue, NW, Washington, DC 20226.

**FOR FURTHER INFORMATION CONTACT:** Charles N. Bacon, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226; telephone (202) 927–8230.

**SUPPLEMENTARY INFORMATION:**

### Background

Under existing law, ATF is charged with the enforcement responsibility of sections 105(e) and 105(f) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e) and (f), which vest in ATF the authority to regulate the labeling and advertising of alcohol beverages, including distilled spirits and malt beverages. These sections authorize the issuance of regulations that will, among other things, prohibit deception of the consumer with respect to the product, and which will provide the consumer with adequate information as to the identity and quality of the product.

More specifically, section 205 makes it unlawful for any person engaged in

business as, in pertinent part, a distiller, brewer, or vintner to sell or introduce any distilled spirits, malt beverages, or wine in interstate commerce unless such products are bottled, packaged, labeled, and advertised in conformity with the FAA Act and regulations promulgated by ATF pursuant thereto. With respect to alcohol beverage labels, ATF is specifically tasked with ensuring that consumers are adequately informed and not misled by such labels.

Under existing regulations, no person may bottle or remove for sale in interstate commerce distilled spirits or malt beverages until such person has applied for and received a certificate of label approval from ATF. As part of the approval process, ATF will advise applicants to make changes to proposed label applications in order to ensure compliance with the requirements of the statute and implementing regulations. ATF has performed this label review and approval function since the inception of the FAA Act in 1935, in order to ensure that consumers are not misled by labels of distilled spirits and malt beverage products.

In recent years there has been an increase in the number of prepackaged low alcohol products. Many products in this low alcohol category are malt beverage specialty products that prominently feature flavors as part of their name such as ''Wild Berries'' or ''Tropical Punch.'' Another recent trend by producers is to use names traditionally associated with distilled spirits cocktails as part of the designation or as a fanciful name for these malt beverage specialty products. Thus, names such as ''Strawberry Daiquiri Flavored Cooler,'' ''Pina Colada Flavored Cooler,'' ''Margarita Flavored Cooler,'' and so forth, are being used for malt-based specialties.

Pursuant to its mandate to review alcohol beverage labels, and consistent with the statutory standard of review, ATF has approved malt beverage labels that contain names such as ''Daiquiri,'' ''Pina Colada,'' ''Margarita,'' ''Planter's Punch,'' and so forth when they describe a flavor component. ATF notes that at least some of these names, such as ''Pina Colada,'' are commonly used as flavor descriptors in other products such as foods, non-alcoholic drinks, and ice cream. ATF has required that the malt beverage labels must contain a statement of composition such as ''Malt Beverage with Natural Flavors'' as part of the class and type statement. ATF has approved such labels in the belief that this requirement is sufficient to inform the consumer as to the alcoholic component of such specialties, and that consumers will not have the impression that these products contain distilled spirits or are like distilled spirits.

ATF also allows the use of the term ''Margarita'' as a flavor descriptor, both for malt-based specialty products and for distilled spirits products that do not contain tequila. In that regard, ATF notes there is no standard of identity for a ''Margarita'' in Part 5. ATF does not, however, approve malt beverage labels which contain terms such as ''Whiskey,'' ''Tequila,'' and so forth since these are the names of distilled spirits that are not contained in these malt-based specialty products.

Petition

Heublein's petition states that beverage producers are marketing malt-based specialty products with the names of cocktails customarily made with distilled spirits, despite the fact that these products contain no distilled spirits. Heublein asserts that the use of these terms in labeling and advertising malt beverages misleads consumers into believing that these products contain distilled spirits. Heublein cites the existing provisions in FAA wine regulations at 27 CFR 4.39(a)(7) and 4.64(a)(8) which prohibit use of distilled spirits terms in the labeling and advertising of wine, and states these same prohibitions should be applied to the labeling and advertising of malt beverages.

Heublein asserts that the current practices result in consumers being misled into believing that malt beverages so labeled contain distilled spirits. To support their claim that consumers are being misled, Heublein submitted two surveys showing consumers' impressions of the ingredients present in two major brands of malt-based specialty products. Consumers were asked to indicate what they believed to be the alcoholic component of malt-based flavored specialty products based on a physical examination of bottles and packaging materials as they would appear in the marketplace.

The first survey indicated that 42 percent of all respondents received some impression that brand ''A'' of a malt-based Margarita specialty product contains tequila. Sixty-nine percent of respondents indicated this product contained tequila after having been given a list of six potential alcoholic ingredients [gin, malt, rum, tequila, vodka, wine] to assist them. The percentage of persons who had the impression that this product contained tequila was slightly higher among respondents who knew that a Margarita is commonly made with tequila.

Twenty percent of respondents identified malt as an ingredient in this brand of malt-based specialty product. This increased to 44 percent identifying malt as an ingredient when the same list of six potential ingredients was presented to these respondents.

The second consumer survey yielded similar results for brand ''B'' of a malt-based Margarita specialty product. Thirty percent of respondents received the impression that it contains tequila; this increased to 64 percent after respondents were given the same list of six potential alcoholic ingredients. Similarly, 17 percent of respondents indicated that this product contains malt. The percentage of persons who had the impression that this product contained malt increased to 45 percent after these respondents were shown the list of six potential ingredients.

Based on these survey results, Heublein asserts that the use of the name of a customary distilled-spirits based cocktail on a label misleads consumers into believing that a malt-based specialty product contains distilled spirits. Heublein claims that this conclusion applies equally to all malt beverages which are labeled with the name of any cocktail customarily made with distilled spirits, and not only to those malt-based specialty products which contain the term ''Margarita'' on which the surveys are based. Heublein maintains this conclusion regardless of the presence of labeling, advertising or other material that would dispel any connection that the labeled or advertised products might have with distilled spirits.

Discussion

It is not clear whether the results of the consumer surveys submitted by Heublein regarding malt-based specialty products labeled as ''Margarita Flavored'' can be applied to similar products. For example, there is no direct evidence presented in the petition that consumers who view products labeled ''Strawberry Daiquiri Flavored Malt Beverage'' or ''Pina Colada Flavored Malt Beverage'' assume that such products contain rum.

With respect to giving the term ''Margarita'' geographic significance, Heublein asserts that the survey shows that the term ''Margarita'' is so closely associated with tequila that consumers are likely to be confused unless tequila is present in any product identified as ''Margarita.'' This action would create a geographic designation for the term ''Margarita'' and would restrict its use to distilled spirits products which contain tequila.

Heublein also asserts that distilled spirits producers are placed at a competitive disadvantage by misleading malt beverage labels. However, no direct evidence has been proffered which would substantiate this claim.

Finally, Heublein asserts that the Department of the Treasury is losing excise tax revenues as consumers replace distilled spirits products with lower-taxed malt beverages. While this may or may not be true, it is not relevant to our labeling authority under the FAA Act. Congress has chosen to tax the products at a different rate and any producer may choose to produce and market lower taxed malt-based products.

Public Participation—Written Comments

ATF requests comments from all interested persons. All comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

We would note that ATF already has received several written comments regarding the issues raised in this petition. These comments will also receive careful consideration.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that a respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) Are legible; (2) are 8–½″ × 11″ in size; (3) contain a written signature; and (4) are three pages or less in length. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Disclosure

Copies of Heublein's full petition and written comments generated pursuant thereto will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 6300, 650 Massachusetts Avenue NW, Washington, DC.

*Drafting Information.* This notice was written by various personnel within the Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

*27 CFR Part 5*

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

*27 CFR Part 7*

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, and Labeling.

Authority. This notice is issued under the authority of 27 U.S.C. 205.

Dated: August 22, 1996.

John W. Magaw,

*Director.*

Approved: September 5, 1996.

John P. Simpson,

*Deputy Assistant Secretary, Regulatory, Tariff and Trade Enforcement.*

[FR Doc. 96–28640 Filed 11–6–96; 8:45 am]

BILLING CODE 4810–31–U

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CGD08–96–053]**

### 33 CFR Part 117

### Notice of Public Hearing

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of public hearing.

**SUMMARY:** The U.S. Coast Guard announces a forthcoming public hearing for the presentation of views concerning the alteration of the Louisiana Railroad Bridge at Louisiana, Missouri.

**DATES:** The hearing will be held at 10 a.m., November 21, 1996.

**ADDRESSES:** The hearing will be held at the City Hall, 121 North 7th Street, Louisiana, Missouri.

Written comments may be submitted to and will be available for examination from 8 a.m. to 4 p.m., Monday through Friday, except holidays, at the office of the Director, Western Rivers Operations, Bridge Section, 1222 Spruce Street, St. Louis, Missouri 63103–2398.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger Wiebusch, Director, Western Rivers Operations, Bridge Branch, 1222 Spruce Street, St. Louis, Missouri 63103–2398, (314) 539–3900 ext. 378.

**SUPPLEMENTARY INFORMATION:** Complaints have been received alleging that the bridge is unreasonably obstructive to navigation. Information available to the Coast Guard indicates there were 140 marine allisions with the bridge between 1984 and 1995. These allisions have caused moderate to heavy damage to the bridge. Based on this information, the bridge appears to be a hazard to navigation. This may require increasing the horizontal clearance on the bridge to meet the needs of navigation. All interested parties shall have full opportunity to be heard and to present evidence as to whether any alteration of this bridge is needed, and if so, what alterations are needed, giving due consideration to the necessities of free and unobstructed water navigation. The necessities of rail traffic will also be considered.

Any person who wishes, may appear and be heard at this public hearing. Persons planning to appear and be heard are requested to notify the Director, Western Rivers Operations, Bridge Section, 1222 Spruce Street, St. Louis, Missouri 63103–2398, Telephone: 314–539–3900 ext. 378, any time prior to the hearing indicating the amount of time required. Depending upon the number of scheduled statements, it may be necessary to limit the amount of time allocated to each person. Any limitations of time allocated will be announced at the beginning of the hearing. Written statements and exhibits may be submitted in place of or in addition to oral statements and will be made a part of the hearing record. Such written statements and exhibits may be delivered at the hearing or mailed in advance to the Director, Western Rivers Operations, Bridge Section. Transcripts of the hearing will be made available for purchase upon request.

Authority: 33 U.S.C. 513; 49 CFR 1.46.

Dated: October 25, 1996.

T.W. Josiah,

*Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.*

[FR Doc. 96–28652 Filed 11–6–96; 8:45 am]

BILLING CODE 4910–14–M

### 33 CFR Part 165

**[CGD 05–96–010]**

**RIN 2115–AE84**

### Regulated Navigation Area; Delaware Bay and River, Salem River, Christina River, and Schuylkill River

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to amend its regulations governing a regulated navigation area on the Delaware Bay and River. The proposed changes would extend the applicability of the regulated navigation area to include the Salem, Christina, and

Schuylkill Rivers between Trenton, NJ, and the Delaware Breakwater. The proposed changes would also institute new regulations governing vessel movement within the expanded regulated navigation area. Many of these requirements were previously imposed on a case-by case basis through issuance of temporary rules and Captain of the Port Orders. The Coast Guard believes that the proposed changes would increase public awareness and improve navigation safety within the regulated navigation area.

**DATES:** Comments must be received on or before February 5, 1997.

**ADDRESSES:** Comments should be mailed to U.S. Coast Guard Marine Safety Office (VWO), 1 Washington Avenue, Philadelphia, PA 19147–4395. The comments and other materials referenced in this notice will be available for inspection and copying at the Marine Safety Office, Philadelphia, PA during normal office hours between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may also be hand delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** LT Robert Hennessy, Assistant Chief, Port Operations Department (ACPOD), at the Marine Safety Office Philadelphia, PA, or by telephone at (215) 271–4883.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Receipt of comments will be acknowledged if a stamped self-addressed postcard is enclosed. Persons submitting comments should include their names and addresses, identify this notice (CGD 05–96–010) and the specific section of the proposal to which the comments apply, and give reasons for each comment. The Coast Guard specifically seeks comments on the proposed operational restrictions. Although not proposed at this time, the Coast Guard also seeks comments on a possible requirement that vessels carrying dangerous cargos on the Delaware River above the C&D Canal be escorted by a Coast Guard vessel in addition to a commercial tug escort.

The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rulemaking process.

## Discussion of Proposed Rule

This proposed rule is part of an overall safety program implemented by the Captain of the Port, Philadelphia, PA to enhance the safe transportation of certain dangerous cargos as defined in 33 CFR 160.203 (a–e) in the Captain of the Port zone.

Existing 33 CFR 165.510 establishes a regulated navigation area for the waters of the Delaware Bay and Delaware River south of the Delaware Memorial Bridge. It prohibits a vessel with a draft of greater than 55 feet from entering the regulated navigation area. It also prohibits oil transfer operations within the regulated navigation area except within specified anchorage grounds or with the authorization of the Captain of the Port. The Coast Guard proposes to expand the regulated navigation area, apply it when vessels transit with dangerous cargos, and impose operational restrictions on vessels operating within the regulated navigation area.

Several waterfront facilities within the Philadelphia Captain of the Port (COTP) zone conduct cargo operations with vessels that carry dangerous cargos listed in 33 CFR 160.203 (a)–(e). These facilities are the Sun Refining and Marketing Company, on the Delaware River, at Marcus Hook, PA; the Sun Refining and Marketing Company Girard Point Wharf, on the Schuylkill River, at Philadelphia, PA; the Atlantic Marine Terminal, on the Delaware River, at Fairless Hills, PA; the Dupont Gibbstown facility on the Delaware River, at Gibbstown, NJ; the Coastal Eagle Point Refinery, on the Delaware River, at West Deptford, NJ; the Mid-Atlantic Shipping Terminal, on the Salem River, at Salem, NJ; the Port of Salem Terminal, on the Salem River, at Salem, NJ; and the Port of Wilmington Terminal, on the Christina River, at Wilmington, DE. Vessels routinely transit to and from these facilities. The proposed rule would extend the regulated navigation area to include the navigable waters of the Delaware Bay and the Delaware, Salem, Christina, and Schuylkill Rivers from Cape May and Harbor of Refuge Lights, north to Cape Henlopen, and on the Delaware River north to the U.S. Route 1 Bridge between Trenton, NJ and Morrisville, PA.

In the past, the Captain of the Port, Philadelphia, established a temporary safety zone whenever a vessel carrying a specified dangerous cargo transited the area. The temporary safety zone regulations routinely prohibited entry into the waters surrounding the vessel and facility without specific permission from the Coast Guard. The COTP would then impose operating restrictions, similar to the measures contained in this proposed rule, as a condition of entry into the safety zone. These temporary rules were often issued on short notice and, as a result, were not published in the Federal Register or codified in the Code of Federal Regulations.

To avoid the need to issue temporary rules and improve the public's knowledge of potential restrictions on navigation, the Coast Guard is proposing several amendments to 33 CFR 165.510. Definitions routinely included in each temporary rule are included in the proposed rule. The proposed rule would apply to all vessels operating in the regulated navigation area, except vessels engaged in law enforcement, servicing aids to navigation, or surveying, maintaining or improving the waterways (e.g., dredges and survey vessels). The 55-foot draft limitation would be retained, but a note would be added to indicate that the projected depth of the Delaware River is 40 feet. Oil transfer operations would continue to be prohibited within the regulated navigation area except within designated anchorage grounds or with permission of the COTP.

Additional operational requirements or restrictions are proposed both for vessels carrying dangerous cargos and for vessels operating in the vicinity of vessels carrying dangerous cargos. The master, owner, or operator of a vessel carrying dangerous cargo would be required to give notice to the COTP at least 72 hours before entering or departing the regulated navigation area, and at least 12 hours before any vessel movement within the regulated navigation area. The required notice would include a report of the vessel's propulsion and machinery status and any outstanding deficiencies identified by the flag state or classification society.

A vessel carrying dangerous cargo would be prohibited from transiting within the regulated navigation area if visibility is or is expected to be less than two nautical miles. Anchoring would be permitted only in an emergency or upon COTP approval. Unless the vessel has two separate and independent steering control systems with duplicate pilot house steering gear controls, the master, owner, or operator would be required to maintain a manned watch within the steering gear compartment during any transit within the regulated navigation area. While at anchor, the master, owner, or operator would be required to have the engines in a condition that full power would be available within five minutes whenever sustained winds

exceeded 25 knots. If sustained winds reach 40 knots or more, the vessel's main engines must be on line. Each vessel would be required to have emergency towing gear rigged while underway, at anchor, or moored. Transfer of dangerous cargo would also be prohibited while a vessel is at anchor or bunkering.

Operational restrictions would also be imposed on vessels operating in the vicinity of a vessel carrying dangerous cargo. While a vessel carrying dangerous cargo is underway, no vessel would be permitted within 500 yards of either side or within 1000 yards of the bow or stern without permission of the COTP. No vessel would be allowed within 100 yards of a moored or anchored vessel carrying dangerous cargo. Commercial vessels attending a vessel carrying dangerous cargo would be allowed to transit within this area with permission from the master of the vessel carrying dangerous cargo. If permitted to enter, the vessel would be required to maintain a continuous radio guard, operate at a ''no wake'' speed or the minimum speed to maintain steerage, and to proceed as otherwise directed by the COTP. No vessel would be permitted to overtake a vessel carrying dangerous cargo unless the overtaking could be complete before reaching any bends in the channel and the masters or operators of both vessels clearly agree on arrangements for the overtaking.

Specific restrictions are also proposed for vessels operating above the C&D Canal. A vessel carrying dangerous cargo would be required to have a tug escort. A vessel carrying dangerous cargo and an oncoming vessel would be prohibited from meeting at a relative speed greater than prudent under the prevailing weather conditions or 20 knots, whichever is less. To the maximum extent possible, vessel masters or operators would be required to avoid meeting situations on river bends.

The proposed rule includes a provision that the COTP will announce scheduled movements of vessels carrying dangerous cargos via Broadcast Notices to Mariners. This will not only alert the maritime public that restrictions will be in effect, but it will also allow mariners to plan activities to minimize the impact of the proposed restrictions.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The practice of establishing a safety zone around a vessel loaded with certain dangerous cargos, notably explosives and Liquefied Petroleum Gas, has been in effect for many years. Small and large companies with vessels operating in Philadelphia are aware of scheduled transits of vessels loaded with dangerous cargos and adjust their vessel movements to minimize any economic impact. The proposed restrictions have been implemented on a case-by-case basis in the form of Captain of the Port Orders or temporary safety zones for each transit. By establishing a permanent rule the Coast Guard will achieve economies in manpower and administrative time, provide the Port of Philadelphia with the widest dissemination of these precautionary measures, and minimize the potential dangers of these movements to the port community. Since this regulated navigation area is not expected to unduly impede the flow of traffic, the impact of these proposed regulations is expected to be minimal, and the Coast Guard believes that this proposal, if adopted, will have only minimal economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) Small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. This proposal would simplify the existing practice of instituting temporary safety zones for the passage of each vessel carrying dangerous cargo and is not expected to unduly impede the flow of vessel traffic. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.e.(34) of Commandant Instruction M16475.1B (as revised by 61 FR 13563; March 27, 1996), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination Statement has been prepared and place in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

In consideration of the foregoing, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.510 is revised to read as follows:

### § 165.510 Delaware Bay and River, Salem River, Christina River and Schuylkill River-Regulated Navigation Area.

(a) *Regulated Navigation Area.* The following is a Regulated Navigation Area: The navigable waters of Delaware Bay and River, Salem River, Christina River, and Schuylkill River, in an area bounded on the south by a line drawn across the entrance to the Delaware Bay between Cape May Lighthouse and Harbor of Refuge Light and then continuing to the northernmost extremity of Cape Henlopen, and

bounded on the north by a line drawn across the Delaware River between Trenton, NJ and Morrisville, PA along the southern side of the U.S. Route 1 Bridge.

(b) *Definitions.* As used in this section:

*COTP* means the Captain of the Port, Philadelphia, PA and any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his or her behalf.

*Dangerous cargo* means those cargos listed in § 160.203 of this chapter when carried in bulk.

*Underway* means that a vessel is not at anchor, made fast to the shore, or aground.

(c) *Applicability.* This section applies to any vessel operating within the Regulated Navigation Area, including a naval or public vessel, except a vessel engaged in:

(1) Law enforcement;

(2) Servicing aids to navigation; or

(3) Surveying, maintaining, or improving waters within the Regulated Navigation Area.

(d) *Draft limitation.* Unless otherwise authorized by the COTP, no vessel with a draft greater than 55 feet may transit within the area between the southern boundary of this regulated navigation area and the southern span of the Delaware Memorial Bridge.

Note: The projected depth of the navigational channels of the Delaware River is 40 feet.

(e) *Oil transfer operations.* Unless otherwise authorized by the COTP, no vessel may conduct oil transfer operations within the area between the southern boundary of this regulated navigation area and the southern span of the Delaware Memorial Bridge except within the anchorage ground designated in § 110.157(a)(1) of this chapter.

(f) *Requirements for vessels carrying dangerous cargos.* The master, owner, or operator of a vessel carrying a dangerous cargo listed in § 160.203 of this chapter shall:

(1) Notify the COTP at least 72 hours before the vessel enters or departs the regulated navigation area and at least 12 hours before the vessel moves within the regulated navigation area. The notice must include a report of the vessel's propulsion and machinery status and any outstanding deficiencies identified by the vessel's flag state or classification society;

(2) Not enter, get or remain underway within the regulated navigation are if visibility is or is expected to be less than two (2) miles. If during the transit visibility becomes less than two (2) miles, the vessel must seek safe anchorage and notify the COTP immediately;

(3) Not anchor in any area within the regulated navigation area unless in times of emergency or with COTP permission;

(4) Not transfer dangerous cargo while the vessel is at anchor or bunkering;

(5) Maintain a manned watch in the steering compartment whenever the vessel is underway within the regulated navigation area unless the vessel has two separate and independent steering control systems with duplicate pilothouse steering gear control systems which meet the requirements of 46 CFR 58.25–55;

(6) When anchored within the regulated navigation area and:

(i) Sustained winds are greater than 25 knots but less than 40 knots, ensure the main engines are ready to provide full power in five minutes or less; and

(ii) Sustained winds are 40 knots or over, ensure that the main engines are on line to immediately provide propulsion;

(7) While moored within the regulated navigation area, ensure that at least two wire cable mooring lines (firewarps) are rigged and ready for use as emergency towing hookups fore and aft on the outboard side of the vessel;

(8) While underway or anchored within the regulated navigation area, ensure that at least two wire cable mooring lines (firewarps) are rigged and ready for use as emergency towing hookups fore and aft on the vessel; and,

(9) Proceed as directed by the COTP.

(g) *Requirements for vessels operating in the vicinity of a vessel carrying dangerous cargos.* (1) Except for a vessel that is attending a vessel carrying dangerous cargo with permission from the master of the vessel carrying dangerous cargo or a vessel that is anchored or moored at a marina, wharf, or pier, and which remains moored or at anchor, no vessel may, without the permission of the COTP:

(i) Come or remain within 500 yards of the port or starboard side or within 1000 yards of the bow or stern of an underway vessel that is carrying dangerous cargo; or

(ii) Come or remain within 100 yards of a moored or anchored vessel carrying dangerous cargo.

(2) The master, owner, or operator of any vessel receiving permission under paragraph (g)(1) of this section shall:

(i) Maintain a continuous radio guard on VHF–FM channels 13 and 16;

(ii) Operate at ''no wake'' speed or the minimum speed needed to maintain steerage, whichever is less; and

(iii) Proceed as directed by the COTP.

(3) No vessel may overtake a vessel carrying dangerous cargos unless the overtaking can be completed before reaching any bend in the channel. Before any overtaking, the pilots, masters or operators of both the overtaking vessel and the vessel being overtaken must clearly agree on the circumstances of the overtaking, including vessel speeds, time and location of overtaking.

(h) *Additional restrictions above the C&D Canal.* When operating on the Delaware River above the C&D Canal:

(1) A vessel carrying dangerous cargo must be escorted by at least one commercial tug; and

(2) A vessel carrying dangerous cargo and an oncoming vessel shall not meet at a relative speed greater than prudent under the prevailing weather conditions or 20 knots, whichever is less. Meeting situations shall be avoided on river bends to the maximum extent possible.

(i) The COTP will issue a Broadcast Notice to Mariners to inform the marine community of scheduled vessel movements during which the restrictions imposed by paragraphs (g) and (h) of this section will be in effect.

Dated: October 7, 1996.

Kent H. Williams,

*Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.*

[FR Doc. 96–28653 Filed 11–6–96; 8:45 am]

BILLING CODE 4910–14–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[AD–FRL–5649–3]**

### National Emission Standards for Hazardous Air Pollutant Emissions from Miscellaneous Organic Chemical Processes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of available information and solicitation of additional information.

**SUMMARY:** The EPA intends to propose a single set of emission standards that will apply to more than 20 listed source categories of hazardous air pollutants (HAP). These emission standards will apply to a group of organic chemical processes for which final standards promulgation is required by November 15, 2000. The Agency anticipates that these standards will also apply to organic chemical processes that have either been excluded from the applicability of emission standards developed for other source categories, or that have not been included within a listed source category.

The purpose of this action is to notify interested parties including owners and operators of chemical processes that could be covered by national emission standards for hazardous air pollutants (NESHAP) applicable to miscellaneous organic processes. The EPA has invited State and Regional environmental agencies, representatives from industry, and representatives from environmental groups to provide input into the development of the set of proposed standards. Representatives of the Synthetic Organic Chemical Manufacturers Association and the Chemical Manufacturers Association are actively providing input into the regulatory development process for the proposed set of standards. The EPA encourages interested parties to provide input into this rulemaking process either through their respective trade organizations, or by contacting EPA directly.

**DOCKET:** Docket No. A–90–49 contains information supporting development of the list of source categories, including those categories for which EPA proposes to develop a set of emission standards by November 15, 2000. A docket supporting development of emission standards discussed in this notice has not yet been established. Docket No. A–90–49 is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, First Floor, 401 M Street, SW., Washington, DC 20406, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Mr. Randy McDonald, Emissions Standards Division, Mail Drop 13, U.S. EPA Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 112 of the Clean Air Act (Act) requires that the Agency list and promulgate NESHAP in order to control, reduce, or otherwise limit the HAP emissions from categories of major and area sources. Pursuant to the specific listing requirements in section 112(c), the Agency published on July 16, 1992 (57 FR 31576), an initial list of 174 categories of major and area sources that would be subject to MACT emission standards. Following this listing, pursuant to requirements in section 112(e), on December 3, 1993 (58 FR 63941) the Agency published a schedule for the promulgation of MACT emission standards for each of the 174 listed source categories.

A number of the source categories for which emission standards must be promulgated by November 15, 2000 (i.e., ten-year standards) can be broadly classified as miscellaneous organic chemical processes. The EPA began collecting information in April 1995 to support development of ten-year standards for listed organic chemical process source categories. Information was collected for more than 300 facilities falling within Standard Industrial Classification (SIC) code 28 (i.e., chemical production processes). These facilities are located in States which have implemented comprehensive air emissions inventory programs and contain high concentrations of chemical producers within their boundaries. The information collected includes process descriptions, sources and quantities of HAP emissions, and emission control levels. The principal sources of these data were air pollutant inventories, construction and operating permits, and electronic databases.

Information collected reveals that many organic chemical processes described by SIC 28, including processes covered by 21 ten-year source categories, involve similar process equipment, similar emission points and control equipment, and are in many cases co-located with other listed sources. The EPA has also identified a number of organic chemical processes which are not included in the source category list (57 FR 31576). These processes, their emission points, and applicable controls are similar to the 21 listed source categories. These organic chemical processes are also co-located with each other and the listed source categories.

## II. Description of Agency's Intent

### *A. Develop a Single Set of Emission Standards for the Group of Miscellaneous Organic Chemical Processes*

The knowledge gained from preliminary data collection efforts, combined with the section 112 (c) and (e) requirements to list categories of major HAP sources and to promulgate emission standards for all listed categories by November 15, 2000, has prompted the Agency to propose developing a set of emission standards which applies to a broad group of organic chemical processes. The EPA envisions that the set of emission standards would establish MACT for 21 of the listed source categories scheduled for promulgation by November 15, 2000. Other major sources not included within a listed source category, or excluded from the applicability of regulations promulgated for other source categories, will also be covered by the set of standards.

Twelve of the 21 listed source categories which will be covered by the miscellaneous organic chemical processes MACT standards are listed under the Miscellaneous Processes Industry Group (57 FR 31576). These include: Benzyltrimethylammonium chloride production, carbonyl sulfide production, chelating agents production, chlorinated paraffins production, ethylidene norbornene production, explosives production, hydrazine production, photographic chemicals production, phthalate plasticizers production, rubber chemicals production, symmetrical tetrachloropyridine production, and OBPA/1,3-diisocyanate production.

Eight of the 21 listed source categories which will be covered by the MACT standards for miscellaneous organic chemical processes are listed under the Polymers and Resins Industry Group. These include: Alkyd resins production, polyester resins production, polyvinyl alcohol production, polyvinyl acetate emulsions production, polyvinyl butyral production, polymerized vinylidene chloride production, polymethyl methacrylate production, and maleic anhydride copolymers production.

One of the 21 listed source categories which will be covered by the MACT standards for miscellaneous organic chemical processes is listed under the Surface Coating Processes Industry Group. This category is manufacture of paints, coatings and adhesives.

The EPA envisions that the set of emission standards will establish control requirements for organic chemical processes which: (1) Are described by SIC codes 282, 284, 285, 286, 287, 289, and 386; (2) emit HAP; (3) are located within a stationary source or a contiguous group of stationary sources that emit or has the potential to emit at least 10 tons of one, or an aggregate 25 tons or more HAP per year; and (4) are not covered by any other MACT standard.

Organic chemical processes not covered by any other MACT standard include: (1) The 21 listed source categories identified above; (2) organic chemical processes excluded from applicable requirements of any other MACT standard, which include: (a) Process vents for batch reactors used in producing the organic chemicals listed in table 1 of the emission standards

popularly known as the hazardous organic NESHAP (HON), 40 CFR Part 63 Subpart F, covering the synthetic organic chemical manufacturing industry (SOCMI), (b) HAP emissions from a SOCMI process using HAP only as a solvent, (c) production of pesticide intermediates not covered by the agricultural chemicals production NESHAP, and (d) production of by-products, co-products and intermediates not considered primary products under the NESHAP for Group I and Group IV polymers and resins; and (3) those product processes identified by EPA based on information gathered which include: alcohols, plasticizers, oil additives, synthetic fatty acids, trioxane/trioxane polymer, hexamethylene diisocyanate, urea, nitroparaffin derivatives, polyethylene, Exxate™, dicapryl phthalate, glyphosate, ethoxolates, alkyl naphthalene, polypropylene, neopentyl glycol, hexanediol, primene, hexamethylene diisocyanate, adipic acid, sorbic acid, alkyl phenol, primene, and lactic acid; and (4) other product processes not identified above that can be broadly characterized as organic chemical processes not covered by any other MACT standard.

The EPA recognizes that the list of source categories will need to be amended to reflect the inclusion of sources identified above. The list of categories of major sources of HAP will be amended by adding a new miscellaneous organic chemical source category. This category will subsume the 21 listed source categories and will include all other organic chemical processes not covered by another MACT standard. This action will be taken at a later date.

The set of emission standards for miscellaneous organic chemical processes would be promulgated by November 15, 2000. Section 112(c)(5) of the Act provides that for categories of major HAP sources added to the initial list, standards must be established by November 15, 2000, or within 2 years after the date when such category is listed, whichever is later. Therefore, the NESHAP promulgation date for the newly identified organic chemical processes will be the same as that for the 21 existing ten-year source categories.

### *B. Rationale for Developing a Single Set of Emission Standards for the Group of Miscellaneous Organic Chemical Processes*

Preliminary data indicate that the process equipment, emission characteristics, and applicable control technologies are similar for the broad group of sources that EPA intends to regulate under a single set of standards. These data also indicate that, for purposes of characterizing and controlling process emissions, distinctions based on whether the production of these organic chemicals is a formulation operation or a chemical reaction, and whether the process vessel is a batch or continuous reactor, are more significant than differences among the final chemical products themselves. For these reasons, EPA believes that it is technically feasible to regulate emissions from a variety of organic chemical processes by a single set of emission standards. The Agency envisions a set of standards establishing separate control requirements for chemical production processes and formulation/blending operations. The set of standards could also establish varying control requirements based on distinctions among classes, types, and sizes of sources. Similar to the HON, separate requirements will be proposed for process vents, transfer operations, storage tanks, equipment leaks, and wastewater HAP emission points. Separate control requirements may also be established for emission points associated with continuous reactors, batch reactors, and formulation/blending.

Several other reasons support the development of a single set of emission standards for a group of organic chemical processes. Data gathered indicate that many of the organic chemical processes that EPA is proposing to regulate by this set of standards are co-located within individual facilities. Facilities with co-located organic chemical processes could more easily comply with a single set of emission standards than with individual standards for each of the co-located processes. For instance, a facility with co-located sources would have to implement only one leak detection and repair program, and would have to maintain only one set of records and submit one set of reports to document compliance if there is a single set of standards.

Another justification for developing a single set of emission standards to regulate production of a variety of organic chemicals is that it would be less costly for EPA to develop a single standard than to develop separate standards for several individually listed source categories which have similar emission characteristics and applicable control technologies. Moreover, a single set of emission standards could cover production of future (i.e., not yet produced) organic chemicals. It is likely that such chemicals will be produced via batch reactions or continuous reactions or formulation/blending operations and, therefore, could be regulated by the miscellaneous organic chemical process NESHAP (MON) envisioned by EPA. Development of the MON would avoid the costs associated with having to develop emission standards for categories of organic chemicals that would otherwise be listed as major sources of HAP after November 15, 1998.

In order to develop a single set of standards for a group of miscellaneous organic chemical processes, EPA will take advantage of its experience from previous actions that addressed groups of chemical processes in a single rulemaking. The EPA plans to use the products of past rulemakings and guidance documents, such as the HON, polymers and resins rules, and the Alternative Control Techniques Document-Batch Processes, as building blocks for developing the proposed set of standards. A single set of standards for miscellaneous organic chemical processes will ensure that process equipment with comparable HAP emissions and control technologies are subject to consistent emission control requirements.

## III. Administrative Requirements

### *A. Docket*

The docket for revisions to the list of source categories is A–90–49. This docket is an organized and complete file of all the information submitted to or otherwise considered by the Agency in the development of the revised list of categories of sources and the revised schedule for standards. A docket containing the information supporting development of the single set of emission standards discussed in this notice has not yet been established. Existing and future dockets associated with the actions discussed in this notice are, or will be available for public inspection at EPA's Air and Radiation Docket and Information Center, which is listed in the **ADDRESSES** section of this notice.

### *B. Regulatory Requirements*

Today's notice is only a notice of the information available to the Agency for purposes of standard development. Today's notice is also a solicitation of information and participation from interested parties. The notice imposes no regulatory requirements or costs. Therefore, EPA has prepared neither an assessment of the potential costs and benefits pursuant to Executive Order 12866, an economic impact analysis pursuant to Section 317, a regulatory

flexibility analysis pursuant to the Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980), nor a budgetary impact statement pursuant to the Unfunded Mandates Act of 1995. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Dated: October 31, 1996.

Richard Wilson,

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 96–28657 Filed 11–06–96; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## 43 CFR Parts 2800, 2920, 4100, 4300, 4700, 5460, 5510, 8200, 8340, 8350, 8360, 8370, 8560, 9210, and 9260

**[WO–130–1820–00 24 1A]**

**RIN 1004–AC30**

## Law Enforcement—Criminal

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Land Management (''BLM'') proposes to revise and consolidate many of the regulations which instruct the public regarding requirements for the management, use and protection of public lands, the knowing and willful violation of which subjects you to criminal penalties. The existing regulations which may, if knowingly and willfully violated, result in criminal penalties, are often difficult to understand and are scattered throughout the Code of Federal Regulations (''CFR''). Certain sections are no longer applicable but continue to take up space in the CFR. BLM proposes to remove obsolete regulations, consolidate many of the regulations that continue to apply in one new part, and rewrite the remaining regulations in plain English so that the regulated public can understand what actions are prohibited on BLM land.

**DATES:** Submit comments by January 6, 1997. BLM will consider comments postmarked on or before this date in preparing the final rule.

**ADDRESSES:** You may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240. You may transmit comments electronically via the Internet to WOComment@wo.blm.gov. Please include ''Attn: AC30'' and your name and address in your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly.

**FOR FURTHER INFORMATION CONTACT:** Dennis McLane (208) 387–5126.

**SUPPLEMENTARY INFORMATION:**



### I. Public Comment Procedures

Written comments on the proposed rule should:

(a) Be specific;

(b) Be confined to issues pertinent to the proposed rule;

(c) Explain the reason for any recommended change;

(d) Reference the specific section or paragraph of the proposal which the commenter is addressing, where possible.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

### II. Background

Section 303 of the Federal Land Policy and Management Act of 1976 (''FLPMA'' or ''the Act'') authorizes criminal enforcement of regulations adopted by the Secretary of the Interior through BLM under FLPMA relating to the management, use, and protection of the public lands and the property located thereon. 43 U.S.C. 1733. FLPMA provides for criminal penalties in the amount of $1,000 or imprisonment of no more than 12 months, or both, for violations of the Act. *Id*. Federal laws concerning public lands and resources often prescribe criminal penalties in excess of those provided for in FLPMA. For example, the alternative fines provisions of Title 18 U.S.C. Section 3571 allows assessment of a fine of not more than $100,000 for misdemeanors punishable by imprisonment for more than 6 months. Since FLPMA allows imprisonment of up to 12 months for a violation, the larger penalties under 18 U.S.C. 3571 apply to BLM programs. The proposed rule cites Federal law where fines larger than those allowed by FLPMA apply. Proposed part 9260 also describes the law enforcement authority of BLM, how BLM applies criminal penalties and procedures to certain BLM activities, and identifies many specific prohibited acts and many other regulations, the knowing and willful violation of which may subject you to criminal penalties.

The proposed rule would help the public and Federal, State, and local agencies to understand the scope of BLM law enforcement authority, and the Federal laws and regulations that apply to public lands and BLM activities.

BLM has attempted to consolidate criminal regulations before. Part 9260 was originally published May 20, 1980, as a final rule. The intent of that rulemaking was to establish a single regulatory section where all enforcement provisions of the various land use regulations could be found. The regulations in part 9260 were duplicates of the regulations contained in other parts of Title 43 dealing largely with non-mineral use or development of the public lands. BLM intended to amend part 9260 each time a law enforcement regulation was added or amended to other parts of Title 43. Since BLM did not amend 9260 each time a law enforcement regulation was added or amended in other parts of Title 43, part 9260 now conflicts with other sections of 43 CFR containing law enforcement regulations.

Several executive branch directives call for efficiency in the regulatory process. BLM is meeting the requirements of those directives by:

(a) Streamlining its regulations and eliminating obsolete and outdated regulations;

(b) Reviewing existing regulations to discover opportunities to combine related resources and concepts; and

(c) Reducing regulatory volume and rewriting the regulatory text in clearer and more action-oriented language.

In many subparts of 43 CFR, BLM's regulations currently include lists of prohibited acts which are similar in nature. Other subparts in 43 CFR, especially those related to mineral development in Groups 3000 through 3800 of 43 CFR, do not rely on lists of prohibited acts to enforce the law. Instead, they are made up of regulatory requirements, the knowing and willful violation of which may subject you to criminal penalties. The minerals regulations may also list acts of noncompliance which, if you engage in them, may subject you to criminal penalties. Consequently, a lessee, operator, miner or other user of the public lands who knowingly and willfully violates such regulatory requirements, including those found in

43 CFR Groups 3000–3800, may be subject to criminal penalties under FLPMA. Because of the broad nature of BLM's enforcement authority under FLPMA, BLM is the only Federal land management agency that does not consolidate all criminal regulations in one part. While this proposed rule would consolidate BLM's prohibited acts provisions in one part to reduce the number of criminal regulations, it is not possible to completely consolidate all of BLM's regulations which impose requirements on the public, the knowing and willful violation of which would subject a person to criminal penalties. By revising the regulations, BLM would make them more understandable and easier to locate, and bring BLM in line with other Federal land management agencies as much as is possible at this time.

III. Discussion of Proposed Rule

This rule proposes to remove criminal law enforcement provisions from parts 2800, 2920, 4100, 4300, 4700, 5460, 5510, 8200, 8340, 8350, 8360, 8370, 8560, and 9210, and consolidate them in a new part 9260. Because of BLM's overall regulatory reform program, several of these parts may be proposed for amendment. In this rule, BLM will refer to the existing section numbers it proposes to remove, even though there may be proposed rules that will change the section numbering of those parts. When this rule is prepared for publication as a final rule, BLM will correct any inconsistencies.

BLM has prepared the following chart to show where in the proposed rule the criminal law enforcement provisions from the old CFR will be located. In some instances, the chart serves merely to cross reference existing rules with the proposed rules, rather than to indicate the deletion of the existing rules.

| Existing rules | "Plain English" proposed rule |
|---|---|
| § 9260.0–1 | § 9260.1 |
| § 9260.0–3 | § 9260.2 |
| §§ 8340.0–5, 8372.0–5, 8360.0–5 | § 9260.6 |
| §§ 2801.3(g), 2920.1–2(e), 3715.8, 4170.2, 4340.1(b), 4770.5, 5462.3, 5511.5, 8224.2, 8340.0–7, 8351.2–1(f), 8360.0–7, 8372.0–7(b), 8560.5, 9212.4, 9262.1 | § 9260.8 |
| §§ 2880.0–7, 3715.0–1(b), 8340.0–8 | § 9260.7 |
| None | § 9261.1 |
| None | § 9261.2 |
| None | § 9261.3 |
| None | § 9261.4 |
| §§ 3715.6(f), 3715.8–1, 4140.1(b)(4), 4140.1(b)(7), 4140.1(b)(8), 5462.2(b)(9), 5511.4(b)(1), 8365.1–4,8365.1–5 | § 9262.1 |
| § 8365.1–4(b) | § 9262.2 |
| § 8365.1–4(b) | § 9262.3 |
| § 8365.1–1 | § 9262.4 |
| § 8365.1–2 | § 9262.5 |
| None | § 9262.6 |
| § 8365.1–4 | § 9262.7 |
| § 9212.1 | § 9262.8 |
| §§ 8341.1, 8365.1–3, 8365.2–4 | § 9263.1 |
| § 8343.3 | § 9263.2 |
| §§ 2920.1–2, 3715.6(e), 4140.1(b)(1), 5462.1(a)(5), 5511.4(b)(3), 8372.0–7 | § 9264.20 |
| §§ 2801.3 | § 9264.30 |
| §§ 2920.1–2, 3715.6, 8365.1–2 | § 9264.50 |
| § 8372.0–7 | § 9264.60 |
| § 3715.6 | § 9264.70 |
| § 4140.1(b) | § 9264.80 |
| §§ 5462.2, 5511.4, 9265.6 | § 9264.90 |
| § 8365.1–5(b) | § 9265.1 |
| § 8365.1–5(c) | § 9264.1 |
| § 4770.1 | § 9265.20 |
| None | § 9265.30 |
| None | § 9265.31 |
| § 9268.3(e)(2)(iii)(A) | § 9265.41 |
| § 9264.1(h) | § 9265.42 |
| None | § 9265.43 |
| § 8365.1–5(a)(1) | § 9265.50 |
| §§ 4140.1(b)(3), 8365.1–5(a)(2) | § 9265.60 |
| None | § 9265.70 |
| § 8365.2–1 | § 9266.21 |
| § 8365.2–3 | § 9266.22 |
| § 8365.2–1(c) | § 9266.23 |
| § 8365.2–2 | § 9266.24 |
| § 8365.2–5(a) | § 9266.25 |
| § 8560.1–2 | § 9267.1 |
| § 8351.1–1 | § 9267.20 |
| None | § 9267.40 |
| None | § 9268.10 |
| § 8223.1 | § 9268.20 |
| § 8224.1 | § 9268.30 |
| None | § 9268.50 |
| None | § 9268.60 |
| §§ 8351.2–1,8364.1, 8560.1–1, 9212.2 | § 9269.2 |
| §§ 8351.2–1(a), 8364.1(a), 8560.1–1(a), 9212.2(a) | § 9269.3 |
| §§ 8364.1 (b), 9212.2(b) | § 9269.3 |
| §§ 8364.1(b)(6), 9212.2(b)(4) | § 9269.4 |
| §§ 8364.1(c) | § 9269.5 |
| None | § 9269.6 |
| None | § 9269.7 |
| None | § 9269.8 |
| §§ 8364.1(d), 9212.1(h) | § 9269.9 |
| §§ 8351.2–1(a), 8365.1–6 | § 9269.21 |
| §§ 8351.2–1(d), 8365.1–6(a) | § 9269.22 |
| §§ 8365.1–6(c) | § 9269.23 |
| None | § 9269.24 |
| §§ 8351.2–1(f), 8365.1–6 | § 9269.25 |

Wherever existing rules listed specific prohibited acts, those prohibited acts have been relocated or referenced in the proposed rule, as shown in the table above, and converted to plain English. No substantive changes were made to these provisions. This rule specifies that BLM law enforcement will take action to enforce BLM regulations on activities occurring on BLM lands and activities on or having a clear potential to affect water bodies on or adjacent to BLM lands. The statement that BLM will regulate activities on (or having a clear potential to affect) water bodies on or adjacent to BLM lands is not an attempt to establish ownership over those waters, but an attempt to clarify BLM's jurisdiction for protection of resources.

Please note that the minerals rules in Groups 3000 through 3800 of 43 CFR, with a few exceptions, are not addressed by this rule. Although most of the minerals rules do not list prohibited acts, the rules are replete with regulatory requirements which are enforceable by law. Consequently, when referring to this proposed rule, do not assume that an activity is not criminally punishable if it is not listed among the prohibited acts in this rule. You are still obligated to comply with all requirements of BLM's regulations which govern management, use and protection of the public lands.

A number of definitions have been added to section 9260.6 of the proposed rule, and a prohibition against hindering lawful hunting was added to enforce the Recreational Hunting Safety and Preservation Act of 1994 (16 U.S.C. 5202). This statute provides that if you hinder lawful hunting, you may be subject to civil penalties of not more than $10,000, if the violation involves the use of force or violence or the threatened use of force or violence, against the person or property of another person; and not more than $5,000 for any other violation.

As mentioned above, the proposed rule cites Federal law where fines larger than those allowed by FLPMA apply. BLM would like to point out the inclusion of penalty provisions in the proposed rule at section 9260.8 (i)–(j), which relates to violations of the Mineral Leasing Act, 30 U.S.C. 181 *et seq.*, or its implementing regulations.

Certain violations of the Mineral Leasing Act are punishable by fines of no more than $500,000, or imprisonment for no more than 5 years, or both, pursuant to 30 U.S.C. 195.

The following sections were removed, for the reasons provided:

*Part 2800*

1. Section 2800.0–5 is amended by removing paragraph (v), because the definition of ''willful trespass'' conflicts with the other trespass provisions located in proposed part 9260.

*Part 2920*

2. Section 2920.0–5 is amended by removing paragraph (m), for the same reason in 1. above.

3. Section 2920.1–2 is amended by removing paragraph (e), for the same reason in 1. above.

BLM is interested in comments on the section on Wild Horses and Burros in the proposed rule. BLM has included the prohibitions regarding this program in section 9265.20 of its proposed rule without making substantive changes. BLM is looking for a better way to define when it is permissible for a person to destroy a wild horse or burro without BLM's authorization.

BLM would also welcome public comments on a modification it is proposing in sections 9266.21 and 9266.23 of the rule. BLM's regulations provide that animals other than seeing-eye dogs or hearing-ear dogs are not permitted in swimming areas, and animals brought to recreation sites or areas must be leashed or physically restricted at all times. BLM proposes to exempt service dogs from these provisions. To accomplish this, BLM has added a new definition of ''service animal'' to section 9260.6 of the proposed rule:

*Service Animal* means the same as provided in the definition section of the regulations implementing the Americans With Disabilities Act, 28 CFR 36. The current definition section of these regulations, 28 CFR 36.104, defines a service animal as: Any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

BLM would like comments regarding any types of service dogs or animals that may have been omitted in this definition.

IV. Procedural Matters

*National Environmental Policy Act*

BLM has prepared an environmental assessment (EA), and has found that the proposed rule would not constitute a major federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified previously. BLM invites the public to review these documents by contacting us at the addresses listed above (see **ADDRESSES**), and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the Written Comments section above, or contact us directly.

*Paperwork Reduction Act*

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

*Regulatory Flexibility Act*

BLM has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed removals and revisions will reduce the overall content of the existing 43 CFR regulations, but will not impose any new requirements or burdens upon small entities.

*Unfunded Mandates Reform Act*

BLM has determined that this proposed rule will not result in any unfunded mandate to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

*Executive Order 12612*

The proposed rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

*Executive Order 12630*

The proposed rule does not represent a government action that interferes with constitutionally protected property rights or would result in a taking of private property.

*Executive Order 12866*

BLM has determined that the proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866. The rule is therefore not subject to review by the Office of Management and Budget under section 6(a)(3) of that order.

*Executive Order 12988*

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

*Author*

The principle author of this proposed rule is Dennis McLane of the National Law Enforcement, Security, and Investigations Team, BLM, assisted by the Regulatory Management Group.

List of Subjects

*43 CFR Part 2800*

Communications, Electric power, Highways and roads, Land Management Bureau, Pipelines, Public lands-rights-of-way, Reporting and recordkeeping requirements.

*43 CFR Part 2920*

Land Management Bureau, Public lands, Reporting and recordkeeping requirements.

*43 CFR Part 4100*

Administrative practice and procedure, Grazing lands, Land Management Bureau, Livestock, Penalties, Range management, Reporting and recordkeeping requirements.

*43 CFR Part 4300*

Administrative practice and procedure, Alaska, Grazing lands, Land Management Bureau, Range Management, Reindeer, Reporting and recordkeeping requirements.

*43 CFR Part 4700*

Horses, Intergovernmental relations, Land Management Bureau, Penalties, Public lands, Range management, Reporting and recordkeeping requirements, Wildlife.

*43 CFR Part 5460*

Forests and forest products, Government contracts, Land Management Bureau, Public lands.

*43 CFR Part 5510*

Forests and forest products, Land Management Bureau, Public lands.

*43 CFR Part 8200*

Land Management Bureau, Public lands, Research.

*43 CFR Part 8340*

Land Management Bureau, Public lands, Recreation and recreation areas, Traffic regulations.

*43 CFR Part 8350*

Land Management Bureau, National trails system, National wild and scenic rivers system, Penalties, Public lands.

*43 CFR Part 8360*

Land Management Bureau, Penalties, Public lands, Recreation and recreation areas.

*43 CFR Part 8370*

Land Management Bureau, Penalties, Public lands, Recreation and recreation areas, Reporting and recordkeeping requirements, Surety bonds.

*43 CFR Part 8560*

Land Management Bureau, Penalties, Public lands, Reporting and recordkeeping requirements, Wilderness areas.

*43 CFR Part 9210*

Fire prevention, Land Management Bureau, Penalties, Public lands.

*43 CFR Part 9260*

Continental shelf, Forests and forest products, Land Management Bureau, Law enforcement, Penalties, Public lands, Range management, Recreation and recreation areas, Wildlife.

For the reasons stated above, and under the authority of sections 303 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. §§ 1733 and 1740), chapter II, subtitle B, title 43 of the Code of Federal Regulations, is proposed to be amended as set forth below:

Date: October 29, 1996.

Sylvia V. Baca,

*Deputy Assistant Secretary of the Interior.*

## PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

1. The authority citation for part 2800 continues to read as follows:

Authority: 43 U.S.C. 1733, 1740, 1761–1771.

### § 2800.0–5 [Amended]

2. Section 2800.0–5 is amended by removing paragraph (v).

3. Section 2800.0–5 is amended by removing the letter designations for the definitions, and alphabetizing the terms therein.

### § 2801.3 [Amended]

4. Section 2801.3 is amended by removing paragraph (g).

## PART 2920—LEASES, PERMITS AND EASEMENTS

5. The authority citation for part 2920 continues to read as follows:

Authority: 43 U.S.C. 1732, 1733 and 1740.

### § 2920.0–5 [Amended]

6. Section 2920.0–5 is amended by removing paragraph (m).

### § 2920.1–2 [Amended]

7. Section 2920.1–2 is amended by removing paragraph (e).

8. Section 2920.1–2 is amended by redesignating paragraph (f) as paragraph (e).

## PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

9. The authority citation for part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 1181d, 1740.

10.–11. Section 4140.1(b) is revised to read as follows:

### § 4140.1 Acts prohibited on public lands.

* * * * *

(b) Persons performing the prohibited acts related to rangelands under § 9264.80 may be subject to civil penalties under § 4170.1 and criminal penalties under § 9260.8.

* * * * *

### §§ 4170.2, 4170.2–1, 4170.2–2 [Removed]

12.–13. Sections 4170.2, 4170.2–1, and 4170.2–2 are removed.

## PART 4300—GRAZING ADMINISTRATION; ALASKA; REINDEER

14. The authority citation for part 4300 continues to read as follows:

Authority: Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315(a)–315(r)), section 4 of the Act of August 28, 1937 (43 U.S.C. 1181(d)), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

15. Section 4340.1 is amended by removing paragraph (b) and the paragraph designation ''(a)''.

## PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

16. The authority citation for part 4700 continues to read as follows:

Authority: 16 U.S.C. 1331–1340; 18 U.S.C. 47; 43 U.S.C. 315 and 1740.

17.–20. The heading of subpart 4770 is amended by removing ''Prohibited Acts,''.

### §§ 4770.1, 4770.4, 4770.5 [Removed]

21. Sections 4770.1, 4770.4, and 4770.5 are removed.

### §§ 4770.2 and 4770.3 [Redesignated as §§ 4770.1 and 4770.2]

22. Subpart 4770 is amended by redesignating §§ 4770.2 and 4770.3 as §§ 4770.1 and 4770.2, respectively.

## PART 5460—SALES ADMINISTRATION

23. The authority citation for part 5460 continues to read as follows:

Authority: 30 U.S.C. 601 *et seq.*, 43 U.S.C. 1181e.

### §§ 5462.2 and 5462.3 [Removed]

24.–26. Subpart 5462 is amended by removing §§ 5462.2 and 5462.3.

## PART 5510—FREE USE OF TIMBER

27. The authority citation for part 5510 continues to read as follows:

Authority: 61 Stat. 681, as amended; 69 Stat. 367; 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, R.S. 2478, sec. 32, 41 Stat. 450; 30 U.S.C. 601 *et seq.*, 43 U.S.C. 315, 48 U.S.C. 423, 43 U.S.C. 1201, 30 U.S.C. 189.

28.–29. Subpart 5511 is amended by removing §§ 5511.4 and 5511.5.

## GROUP 8200—NATURAL HISTORY RESOURCE MANAGEMENT—[REMOVED]

30. Group 8200 is removed and reserved.

## PART 8340—OFF-ROAD VEHICLES

31. The authority citation for part 8340 continues to read as follows:

Authority: 43 U.S.C. 1201, 43 U.S.C. 315a, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 4601–6a, 16 U.S.C. 1241 *et seq.*, and 43 U.S.C. 1701 *et seq.*

### § 8340.0–7 [Removed]

32.–36. Section 8340.0–7 is removed.

### Subpart 8341—[Amended]

37. The heading of subpart 8341 is amended by removing the term ''Conditions of Use'' and adding in its place ''Special Rules.''

### § 8341.1 [Removed]

38. Section 8341.1 is removed.

### § 8341.2 [Redesignated as § 8341.1]

39. Section 8341.2 is redesignated as § 8341.1.

### Subpart 8343—[Removed]

40. Subpart 8343 is removed.

### Subpart 8344—[Redesignated as Subpart 8343]

### § 8344.1 [Redesignated as § 8343.1]

41. Subpart 8344 and § 8344.1 are redesignated as subpart 8343 and § 8343.1, respectively.

## PART 8350—MANAGEMENT AREAS—[REMOVED]

42. Part 8350 is removed.

## PART 8360—VISITOR SERVICES—[REMOVED]

43. Part 8360 is removed.

## PART 8370—USE AUTHORIZATIONS

44. The authority citation for part 8370 continues to read as follows:

Authority: 16 U.S.C. 460l–6a, 16 U.S.C. 670(g–n), 16 U.S.C. 1271– 1287, 6 U.S.C. 1241–1249, 43 U.S.C. 1181(a), 43 U.S.C. 1201, 43 U.S.C. 1701 *et seq.*

45.–47. Section 8372.0–7 is revised to read as follows:

### § 8372.0–7 Civil penalties.

Authorized as well as unauthorized users may be subject to civil action for unauthorized use of the public lands and their resources, or violations of the permit terms or stipulations, or unauthorized activities on or having a clear potential to affect water bodies on or adjacent to BLM lands.

## PART 8560—WILDERNESS AREAS

48. The authority citation for part 8560 continues to read as follows:

Authority: 43 U.S.C. 1701 *et seq.*, 16 U.S.C. 1131 *et seq.*

### § 8560.1–2 [Removed]

49.–52. Section 8560.1–2 is removed.

53.–54. Section 8560.5 is revised to read as follows:

### § 8560.5 Civil penalties.

At the request of the Secretary of the Interior, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from utilizing public lands in violation of the regulations of this part.

## PART 9210—FIRE MANAGEMENT—[REMOVED]

55. Part 9210 is removed.

## PART 9260—LAW ENFORCEMENT—CRIMINAL

56. Part 9260 is revised to read as follows:

### Subpart 9260—Law Enforcement, General

Sec.



### Subpart 9261—Insignia, Badges and Identification Cards



### Subpart 9262—Rules of Conduct on BLM Lands and Facilities



### Subpart 9263—Motor Vehicle Use on BLM Lands



### Subpart 9264—Resource Use and Development of BLM Lands for Commercial or Other Uses That Must Be Authorized by BLM



### Subpart 9265—Public Use and Collection of BLM Resources



### Subpart 9266—Recreation Sites and Areas

Authority: 16 U.S.C. 460 *l*–6a; 16 U.S.C. 470ii; 16 U.S.C. 432; 16 U.S.C. 670h; 16 U.S.C. 712; 16 U.S.C 1246(i); 16 U.S.C. 1281; 16 U.S.C. 1336; 16 U.S.C. 4303; 30 U.S.C. 1701 *et seq.;* 43 U.S.C. 315a; 43 U.S.C. 1061–1066; 43 U.S.C. 1201; 43 U.S.C. 1733(a); 43 U.S.C. 1740; and Executive Order 11644.

## Subpart 9260—Law Enforcement, General

### § 9260.1 What is the purpose of these regulations?

The regulations in this part describe the law enforcement powers and authorities of the Bureau of Land Management (BLM) and identify many of the activities which are prohibited under BLM regulations, especially those related to use of the surface of the public lands. These regulations also describe criminal penalties for committing the listed prohibited acts or for violating other applicable regulatory requirements. With a few exceptions, the regulations in this part do not describe the requirements related to mineral development on the public lands under Groups 3000 through 3800 of this title which are equally enforceable by law. To the extent any miner, operator, lessee or user of BLM lands knowingly or willfully violates regulatory requirements or prohibitions in Groups 3000 through 3800 with respect to the management, use, and protection of the public lands, that person is subject to the criminal penalties under section 303 of FLPMA.

### § 9260.2 What is the authority for these regulations?

The primary authority for BLM's law enforcement program and for the regulations in this part is the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1733). BLM is also authorized, under various other Federal statutes, to enforce certain provisions of those statutes. FLPMA authorizes the Secretary of the Interior to:

(a) Issue regulations pertaining to the management, use, and protection of the public lands and property located on public lands. Violation of a regulation issued under FLPMA is punishable as a criminal offense;

(b) Authorize Federal personnel to enforce Federal laws and regulations relating to the public lands and their resources;

(c) Enter into contracts with local officials with law enforcement authority to enforce Federal laws and regulations relating to the public lands or their resources when he or she determines that such assistance is necessary; and

(d) Cooperate with regulatory and law enforcement officials of any State or political subdivision of a State in enforcing the laws or ordinances of the State or subdivision. This cooperation includes entering into agreements to provide law enforcement services on public lands. The agreement may also reimburse a State or its subdivision for expenditures incurred in providing law enforcement services.

### § 9260.4 What are BLM law enforcement officers authorized to do?

BLM law enforcement officers are authorized to:

(a) Under FLPMA (43 U.S.C. 1733(c)(1)):

(1) Carry firearms;

(2) Execute and serve any warrant or other process issued by a court or officer of competent jurisdiction;

(3) Make arrests without warrant or process for a:

(i) Misdemeanor he or she sees or has reasonable grounds to believe is being committed in his or her presence; or

(ii) Felony, if he or she has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

(4) Search without warrant or process any person, place, or vehicle according to any Federal law or rule of law; and

(5) Seize without warrant or process any piece of evidence as provided by Federal law.

(b) Under 43 U.S.C. 1466, take oaths, affirmations, affidavits and depositions with the same force and effect as if administered or taken before an officer having a seal.

**§ 9260.5 Do BLM law enforcement officers have special authority to conduct investigations concerning Federal oil and gas?**

Yes. Under the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1701 et seq.), BLM law enforcement officers may conduct investigations relating to oil and gas removal from BLM lands and Indian lands. In connection with oil and gas investigations, a law enforcement officer has authority to:

(a) Require any person to submit a written affidavit;

(b) Administer oaths;

(c) Subpoena witnesses;

(d) Subpoena books, papers, records, and documents;

(e) Order testimony to be taken by deposition; or

(f) Stop and inspect any motor vehicle on BLM lands or Indian lands if the law enforcement officer has probable cause to believe that the vehicle is carrying oil from a lease site on those lands. The law enforcement officer may stop the vehicle to determine whether the driver has documentation required by law for the oil.

**§ 9260.6 Definitions.**

As used in this part and in other provisions found in 43 CFR: *Alcoholic beverage* means beer, wine, distilled spirits, and any other beverage defined as such by State law.

*Archeological resource* means the same as defined in part 7 of this Title.

*BLM lands* means public lands defined in the FLPMA as any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership.

*Campfire* means a controlled fire occurring out of doors that is no larger than 3 feet in diameter.

*Camping* means:

(1) Erecting a tent or shelter made of natural or synthetic material;

(2) Preparing a sleeping bag or other bedding material for use; or

(3) Parking a motor vehicle, motor home or trailer, or mooring of a vessel for the apparent purpose of overnight occupancy.

*Commercial filming and/or photography* means the filming of a motion picture or television production or the making of a soundtrack, which involves the use of professional casts, settings or crews by any person other than bona fide newsreel or news television personnel; or the taking of still photographs for the purpose of commercial advertising.

*Commercial recreation use* includes, but is not limited to, guiding, outfitting, sponsoring, organizing, or providing for recreational use of or events on BLM lands for business or financial gain. The following are considered commercial uses:

(1) When any fee, charge, or other compensation which is strictly a sharing of, or is in excess of, actual expenses incurred for the purposes of the activity or use is collected by a permittee, operator, or his agent;

(2) Activities conducted by profit making organizations, even if that part of their activity that requires a permit is not profit making; and

(3) Activities conducted by nonprofit groups when they are for business or financial gain.

*Competitive use* is any formally organized or structured use, event, or activity on BLM lands in which there are the elements of competition between two or more contestants, registration of participants, and/or a predetermined course or area is designated. The term also applies to one or more individuals contesting an established record such as speed or endurance of a person or animal, foot races, water craft races, survival exercises, war game trials or experiences or other similar exercises.

*Controlled substance* means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of 21 U.S.C. 812, or in 21 CFR 1308.11 through 1308.15. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.

*Dangerous activity* means any action which could reasonably be construed as having an undue risk of danger or harm to yourself or others.

*Event* means a single structured, organized, consolidated or scheduled meeting, gathering, or occurrence on BLM lands. An event may be several related activities.

*Fined in accordance with the applicable provisions of Title 18 of the United States Code* means the maximum fine provided for the various classifications of offenses in Title 18 of the United States Code Section 3571—Alternative Fines.

*Hazard or nuisance* means a condition that is dangerous to health, offensive to community moral standards, or an obstruction of the public's use and enjoyment of public lands.

*Hazardous or injurious device* means a device which, when assembled or placed, is capable of causing bodily injury, or damage to property, by the action of any person making contact with such device subsequent to the assembly or placement. This term includes:

(1) Guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms;

(2) Sharpened stakes;

(3) Lines or wires with or without hooks attached;

(4) Nails placed with the sharpened ends positioned in an upright manner; and

(5) Tree spiking devices including spikes, nails or other objects which are hammered, driven, fastened, or placed into or on any timber, whether or not severed from the stump.

*Highway, road or trail* means a way or place that is publicly maintained and open to the public for vehicular travel without regard to which public agency has jurisdiction, operates or maintains it.

*Historical resource* means any structural, architectural, archaeological, artifactual or other material remains of past human life or activities which are of historical or cultural interest. This term includes historic property, as that term is defined in 36 CFR part 800. This term also includes, but is not limited to:

(1) Historic or pre-historic objects, or any piece or portion of objects, made or used by humans, such as historic or pre-historic:

(i) Pottery;

(ii) Basketry;

(iii) Bottles;

(iv) Weapons;

(v) Weapon projectiles;

(vi) Tools; and

(vii) Structures or portions of structures; and

(2) The physical site, location, or context in which the objects like those listed in paragraph (1) of this definition are found, or human skeletal materials or graves which are related to or located in an historic property.

*Law enforcement officer* means a BLM law enforcement ranger or criminal investigator who has been delegated law enforcement authority by the Director to enforce Federal laws and regulations relating to the public lands and their resources.

*Licensed practitioner* means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

*Mechanical equipment* means any device for transporting personnel or

material with wheels, tracks, or skids, or by flotation, for traveling over land, water, or snow, and is propelled by a nonliving power source contained or carried on or within the device; or a bicycle or hang-glider.

*Motor Vehicle* means any motorized vehicle capable of, or designed for, travel or operation on or immediately over land or water.

*Occupancy* means the same as defined in 43 CFR 3715.0–5.

*Other vegetative resource* means the same as defined in 43 CFR part 5400.

*Outstanding natural area* means an area of unusual natural characteristics where management of recreation activities is necessary to preserve those characteristics.

*Paleontological resources* means the remains or trace(s) of a plant or animal which has been preserved by natural processes in the earth's crust or exposed on the surface. The term does not mean energy minerals, such as coal, oil and gas, oil shale, bitumen, lignite, asphaltum and tar sands, even though they are of biologic origin.

*Person* means, depending on the context, individual, corporation, company, partnership, trust, firm, association of persons, or State or political sub-divisions of a State.

*Pollute or contaminate water* means to discharge or place in water any of the following substances: dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste.

*Primitive area* means an area that is composed of natural, undeveloped lands that are essentially unaffected by civilization and located where the natural environment can be preserved by management of recreation activities and exclusion of additional roads and commercial developments.

*Public disturbance* means any activity that interferes with the public's enjoyment of BLM land.

*Range improvements* means the same as defined in 43 CFR part 4100.

*Recreation sites and areas* means sites and areas that contain structures or capital improvements primarily used by the public for recreation purposes. Such sites or areas include:

(1) Delineated spaces for parking, camping or boat launching;

(2) Sanitary facilities;

(3) Potable water systems;

(4) Grills or fire rings;

(5) Tables;

(6) Visitor Centers;

(7) Shelters; and

(8) Display panels or controlled access.

*Research natural area* means an area that is established and maintained for the primary purpose of research and education because the land has one or more of the following characteristics:

(1) A typical representation of a common plant or animal association;

(2) An unusual plant or animal association;

(3) A threatened or endangered plant or animal species;

(4) A typical representation of common geologic, soil, or water features; or

(5) Outstanding or unusual geologic, soil, or water features.

*Scientific resource* means any resource, object or area that is of significant interest or of such unique or unusual character as to warrant a need for scientific study.

*Service animal* means the same as provided in the definition section of the regulations implementing the Americans With Disabilities Act, 28 CFR part 36.

*Special area* is a(n):

(1) National Trail;

(2) National Wild and Scenic River;

(3) National Wilderness Area;

(4) National Conservation Area;

(5) Area of Critical Environmental Concern;

(6) Area covered by joint agreement between the Bureau of Land Management and a State government as provided for in Title II of the Sikes Act; or

(7) Area where BLM determines the resources require special management and control measures for their protection.

*Timber* means the same as defined in 43 CFR part 5400.

*Wild horses and burros* means the same as defined in 43 CFR part 4700.

**§ 9260.7 What is the scope of these regulations?**

The regulations in this part apply to, and the BLM law enforcement program extends to, BLM lands, lands administered by BLM, property on BLM lands, other resources of BLM lands, and activities on or having a clear potential to affect water bodies on or adjacent to BLM lands.

**§ 9260.8 What are the criminal penalties for violating these regulations in this part?**

| If | Then |
|---|---|
| (a) You do not pay any fee required under 43 CFR part 8372 for a special use or event on BLM lands. | You may be brought before a designated United States magistrate judge and fined in accordance with the applicable provisions of Title 18 of the United States Code pursuant to the Land and Water Conservation Fund Act (16 U.S.C. 460*l*–6a). |
| (b) You willfully violate any of the prohibited acts listed in this part within established grazing districts on BLM lands. | You may be brought before a designated United States magistrate judge and fined in accordance with the applicable provisions of Title 18 of the United States Code pursuant to the Taylor Grazing Act (43 U.S.C. 315a). |
| (c) You do not pay any fees required by the Land and Water Conservation Fund Act or 36 CFR part 71 or both. | You may be brought before a designated United States magistrate judge and fined in accordance with the applicable provisions of Title 18 of the United States Code pursuant to the Land and Water Conservation Fund Act (16 U.S.C. 460*l*–6a). |
| (d) You are hunting, trapping or fishing on BLM lands and do not have in your possession a valid BLM public land management area stamp required by BLM under § 9265.41 and the State fish and game agency under the Sikes Act (16 U.S.C. 670(j)).. | You may be brought before a designated United States magistrate judge and fined in accordance with the applicable provisions of Title 18 of the United States Code and/or imprisonment not to exceed 6 months pursuant to the Sikes Act (16 U.S.C. 670(j)(1)). |
| (e) You violate any prohibited act of this part on BLM lands within units of the National Trails System, National Wild and Scenic Rivers System, or within areas subject to a comprehensive plan and cooperative agreement with State fish and game agencies for the conservation and rehabilitation of wildlife, fish, and game. | You may be brought before a designated United States magistrate judge and fined in accordance with the applicable provisions of Title 18 of the United States Code and/or imprisonment not to exceed 6 months pursuant to the National Trails System Act (16 U.S.C. 1246(i)), the National Wild and Scenic Rivers Act (16 U.S.C. 1281(c)), or the Sikes Act (16 U.S.C. 670(j)(2)). |

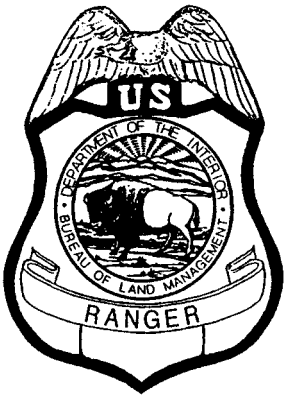
| If | Then |
|---|---|
| (f) You violate any other Federal law or regulation related to the public lands and resources, or any other applicable Federal law or regulation on any BLM lands. | You may be brought before a designated United States magistrate judge and may be subject to the maximum penalty authorized by the applicable provisions of those Federal laws or regulations. |
| (g) You knowingly and willfully violate any of regulatory requirements in 43 CFR applicable to members of the public or any of the prohibited acts listed in this part on any BLM land. | If you are an individual, you may be brought before a designated United States magistrate judge and fined in accordance with the applicable provisions of Title 18 of the United States Code or imprisonment for no more than 12 months, or both, pursuant to FLPMA (43 U.S.C. 1733(a)). If you are a corporation, you may be brought before a designated United States magistrate judge and fined in accordance with the applicable provisions of Title 18 of the United States Code pursuant to FLPMA. |
| (h) You knowingly and willfully do not comply with one of the requirements of this part. | You may be brought before a designated United States magistrate judge and fined in accordance with the applicable provisions of Title 18 of the United States Code or imprisonment for no more than 12 months, or both, pursuant to the FLPMA (43 U.S.C. 1733(a)). |
| (i) You knowingly organize or participate in any scheme, arrangement, plan or agreement to circumvent or defeat the provisions of the Mineral Leasing Act, as amended, 30 U.S.C. 181 *et seq.*, or its implementing regulations. | You may be brought before a designated United States magistrate judge and fined no more than $500,000 or imprisoned for no more than 5 years, or both, pursuant to 30 U.S.C. 195, 101 Stat. 1330–260 (1987). |
| (j) You knowingly seek to obtain or obtain any money or property by means of false statements of material facts or failing to state material facts concerning.<br>(1) The value of any lease or portion thereof issued under the Mineral Leasing Act, as amended, 30 U.S.C. 181 *et seq*;.<br>(2) The availability of any land for leasing under the Mineral Leasing Act, as amended, 30 U.S.C. 181 *et seq*;.<br>(3) The ability of any person to obtain leases under the Mineral Leasing Act, as amended, 30 U.S.C. 181 *et seq.*; or.<br>(4) The provisions of the Mineral Leasing Act, as amended, 30 U.S.C. 181 *et seq.*, and its implementing regulations. | You may be brought before a designated United States magistrate judge and fined no more than $500,000 or imprisoned for no more than 5 years, or both, pursuant to 30 U.S.C. 195, 101 Stat. 1330–260 (1987). |

BILLING CODE 4310–84–P

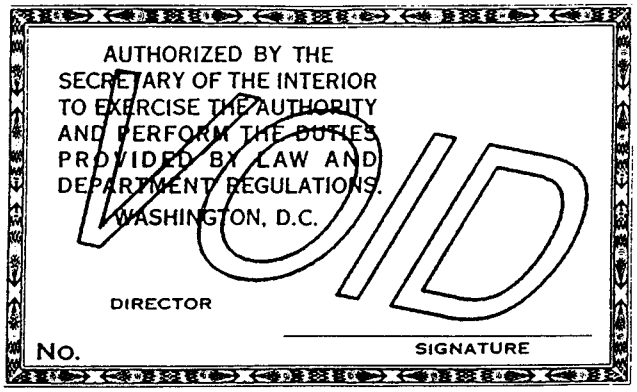
## Subpart 9261—Insignia, Badges and Identification Cards

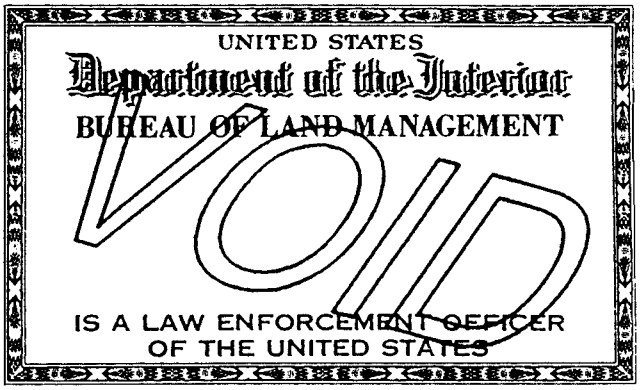
### § 9261.1 What does BLM's official insignia look like?

**§ 9261.2 What do the official badges of BLM law enforcement authorities look like?**


**§ 9261.3 What do the official identification cards of BLM law enforcement authorities look like?**

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**§ 9261.4 May I use, manufacture or possess BLM insignia, badges or identification cards?**

Unless BLM has authorized it, you must not:

(a) Manufacture, sell, or possess any imitation of or any insignia, badge, or identification card illustrated in §§ 9261.1 through 92.61.3;

(b) Make or execute any engraving, photograph, print, or impression of an insignia, badge, or identification card, or insignia like those illustrated in §§ 9261.1 through 92.61.3; or

(c) Possess BLM insignia, badges or identification cards. If you are not authorized to possess a BLM insignia, badge, or identification card, BLM law enforcement officers may seize it.

## Subpart 9262—Rules of Conduct on BLM Lands and Facilities

**§ 9262.1 What BLM rules must I follow when I'm on BLM lands or in BLM buildings or facilities?**

(a) If you are on BLM lands or in buildings or facilities administered by or used to administer BLM lands and resources, you must not:

(1) Resist, evade, or attempt to flee, in order to avoid arrest or being issued a citation by a law enforcement officer performing official duties;

(2) Interfere with any BLM employee or volunteer performing official duties;

(3) Threaten, commit a battery upon, or assault any BLM employee or volunteer performing official duties or on account of performing official duties;

(4) Give a false or fraudulent report of an emergency situation or give false information concerning a crime or violation;

(5) Give false or fraudulent information to a law enforcement officer;

(6) Provide false or fraudulent information or documents, or conceal a material fact relevant to use authorizations or permits;

(7) Knowingly and willfully make payment for any product, use authorization, fee or service with insufficiently funded checks;

(8) Remove, deface, destroy, transport, or convert to private use, property owned, operated, maintained, administered by, or in the custody of BLM;

(9) Tamper with, damage or destroy any improvements, signs, structures, wells, pipelines or dams, administered by BLM;

(10) Enter any building, structure or enclosed area or any portion of any building, structure or enclosed area owned or controlled by the United States not open to the public;

(11) Use, place, or cause to be placed a hazardous or injurious device with disregard for the safety of another;

(12) Create a hazard or nuisance;

(13) Prevent or obstruct free passage or transit over or through the BLM lands by force, threat, intimidation, fences, signs, barriers or locked gates;

(14) Damage, remove, transport, or possess property belonging to another person without permission;

(15) Intimidate, endanger, assault, injure, or interfere with any person; or

(16) Place a vehicle or other object where it impedes or is a hazard to the safety or convenience of any person. A law enforcement officer may remove or have removed a vehicle or other object which impedes or is a hazard to the safety or convenience of any person, or which has been left where it impairs any area of BLM lands.

(b) You must obey the lawful order of a law enforcement officer performing official duties.

**§ 9262.2 What are BLM's rules on possessing, using, or consuming alcohol or controlled substances on BLM lands?**

If you are on BLM lands, you must not:

(a) Sell or give an alcoholic beverage to a person under 21 years of age, except where a lower age limit is allowed by State law;

(b) Possess or consume an alcoholic beverage if you are under 21 years old, unless a lower age limit is allowed by State law;

(c) Sell alcoholic beverages without required State or local permit or license;

(d) Consume alcoholic beverages in areas where BLM or State or Federal law prohibits it;

(e) Cultivate, manufacture, deliver, distribute or traffic a controlled substance. Delivery means the actual, attempted or constructive transfer of a controlled substance whether or not there exists an agency relationship. You may distribute or deliver a controlled substance if you are a licensed practitioner and act according to law;

(f) Possess a controlled substance, including any amount of marijuana over 28.5 grams; or

(g) Possess any amount of marijuana up to and including 28.5 grams.

**§ 9262.3 Are there any circumstances under which I may possess a controlled substance on BLM lands?**

Yes. You may possess a controlled substance if you are a licensed practitioner acting according to law, or you obtained the substance either directly or pursuant to:

(a) A valid prescription or order from a licensed practitioner acting in the course of professional practice; or

(b) Federal or State law.

**§ 9262.4 What BLM rules concerning public health, sanitation, and hazardous materials must I follow while I'm on BLM lands?**

(a) You must not:

(1) Litter.

(2) Drain or dump sewage or solid waste, except in places or receptacles provided for that purpose. You may drain wash water unless BLM has prohibited it by supplementary or special rule.

(3) Dump, leave, or dispose of any household, commercial, hazardous or petroleum products, or industrial trash, refuse, or waste.

(4) Pollute or contaminate water.

(5) Generate, store, treat, transport, dispose of, discharge, or otherwise handle any hazardous waste identified in 42 U.S.C. 6901 *et seq.*, unless you have a valid permit issued under 42 U.S.C. 6925. Section 6925 sets the standards and procedures for permits for the treatment, storage, or disposal of hazardous waste under the Resource Conservation and Recovery Act (RCRA).

(b) You must:

(1) Report immediately to the nearest BLM office that you discharged or spilled hazardous material or waste, oil, flammable material or substance, sewage, or any other harmful substance or pollutant on BLM land.

(2) Use refuse containers and disposal facilities only for purposes for which they are supplied.

(3) Comply with all other requirements of RCRA.

**§ 9262.5 What BLM rules must I follow while I camp on or occupy BLM lands?**

On BLM lands, unless BLM has authorized it, you must not:

(a) Occupy or camp longer than 14 consecutive days out of every 90 consecutive days in the same site or within a 25-mile radius of that site unless BLM authorizes a different time period; or

(b) Leave personal property unattended longer than 14 days (12 months in Alaska). Personal property left unattended longer than 14 consecutive days (12 months in Alaska), without BLM's permission:

(1) Will be considered abandoned;

(2) May be removed by BLM; and

(3) Is subject to disposition under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484(m)).

**§ 9262.6 May I use a bicycle or mechanical equipment on BLM lands?**

You may use bicycles or mechanical equipment on BLM lands unless an area, road or trail is closed to that use. You must obey all special or supplemental rules and posted signs or other notices regarding closures.

**§ 9262.7 What BLM rules concerning public disturbances and dangerous activities must I follow while I'm on BLM lands?**

On BLM lands, unless BLM has authorized it, you must not cause a public disturbance or create a risk to other persons by engaging in activities which include, but are not limited to:

(a) Making unreasonable noise;

(b) Discharging a firearm or any other implement capable of taking human life, causing injury, or damaging property:

(1) In or within 150 yards of a residence, building, campsite, recreation site or occupied area;

(2) Across or on a publicly maintained highway, road, or trail currently open for public motor vehicle traffic or an adjacent body of water; or

(3) At glass bottles or other materials being used for targets that have a tendency to break into hazardous fragments with sharp edges and projections; or

(c) Using or possessing firearms, fireworks, explosives, or other devices or materials in violation of other Federal, State, or local laws, regulations, and ordinances.

**§ 9262.8 What BLM rules must I follow if I want to use fire on BLM lands?**

(a) Unless BLM authorized it, you must not:

(1) Start or ignite a fire. However, BLM does allow campfires and the industrial flaring of gas on BLM lands if you comply with BLM regulations and orders and obtain any necessary authorizations.

(2) Discharge a tracer or incendiary device.

(3) Burn timber, trees, slash, brush, tundra or grass except in campfires.

(4) Leave a fire without extinguishing it except to report that it has spread beyond control.

(5) Resist or interfere with the efforts of firefighter(s) to extinguish a fire.

(b) You must:

(1) Remove all flammable material from around the campfire before you build, attend, maintain or use a campfire, to prevent the fire from spreading.

(2) Have in your possession a valid campfire permit before you build, attend, maintain or use a campfire, when BLM requires a permit.

(3) Obey the conditions of the campfire permit, when BLM requires a permit.

(4) Obey State and local laws, regulations and ordinances concerning fire prevention restrictions, including but not limited to:

(i) Fireworks;

(ii) Spark arresters (A spark arrester is a device that meets the U.S. Department of Agriculture—Forest Service Standard 5100–1a);

(iii) Interfering with emergency operations;

(iv) Arson;

(v) Campfire permits; or

(vi) Use of flammable substances and materials.

## Subpart 9263—Motor Vehicle Use on BLM Lands

**§ 9263.1 What rules must I follow while I operate a motor vehicle or use a trailer on BLM lands?**

(a) While you operate a motor vehicle or use a trailer on BLM lands you must:

(1) Obey State and local laws, regulations, and ordinances relating to the use, standards, registration, operation, and inspection of motorized vehicles and trailers. If State and local

laws, regulations, or ordinances do not exist or are less stringent than the regulations in this part, these regulations are the minimum standards and apply to you and your motor vehicle.

(2) Obey traffic control signs and devices.

(3) Obey posted parking restrictions.

(4) Yield to pedestrians, bicycles, saddle horses, pack animals, or animal drawn vehicles.

(5) Yield to emergency vehicles.

(6) Stop when a law enforcement officer directs you to do so.

(7) Obey the posted speed limit.

(8) Obey the terms and conditions of the applicable designation pertaining to areas and trails under 43 CFR subpart 8342. BLM designates public lands as being open, limited, or closed to motor vehicle use.

(b) You must not use or operate a motor vehicle or trailer on BLM lands:

(1) In any location closed to motor vehicle use;

(2) At a speed greater than is reasonable or prudent or at a speed which endangers the safety of other persons or property;

(3) In a reckless, careless or negligent manner;

(4) While under the influence of alcohol or controlled substances or both (The standards for establishing under the influence are those prescribed by State law in the State where the offense occurs);

(5) In a manner causing, or likely to cause damage to or disturbance of the soil, water, wildlife, wildlife habitat, improvements, cultural, paleontological, or vegetative resources; or

(6) In a manner that would block, restrict, or otherwise interfere with the lawful use of a road, trail, gate, or other area of access.

#### § 9263.2 What standards must my vehicle comply with while on BLM lands?

Your vehicle must be equipped with:

(a) Lighted headlights and taillights during night hours, which means the hours from a half-hour after sunset to a half-hour before sunrise. If you are driving a motor vehicle on BLM lands during night hours, your vehicle must comply with the following:

(1) Headlights must be powerful enough to illuminate an object at 300 feet at night under normal atmospheric conditions;

(2) Two- or three-wheeled vehicles, single tracked vehicles, and other vehicles commonly referred to as all-terrain vehicles must have at least one headlight;

(3) Vehicles with four or more wheels or more than a single track must have at least two headlights;

(4) Double tracked snow machines with a maximum capacity of two people must have at least one headlight; and

(5) Taillights must be red and capable of being seen at a distance of 500 feet from the rear at night under normal atmospheric conditions. Vehicles must have at least the same number of taillights as headlights;

(b) Brakes in good working condition;

(c) A functional muffler or be equipped with a muffler cutout, bypass, or similar device. Your vehicle must not produce excessive noise; and

(d) Seat belts for each front seat passenger that conform to United States Department of Transportation standards. Each front seat passenger must be restrained by a seat belt while your vehicle is in motion. Children must be restrained in car seat safety devices or seat belts, according to provisions of State law.

## Subpart 9264—Resource Use and Development of BLM Lands for Commercial or Other Uses That Must Be Authorized by BLM

#### § 9264.1 For what types of activities does BLM require authorization for use and development of BLM lands and resources?

If you want to use, occupy or develop BLM lands for commercial purposes or other purposes that involve altering the natural terrain or removal of resources, you may need to obtain a use authorization, lease, permit or other authorization from BLM. Please consult the specific subpart(s) in 43 CFR which govern the activity in which you would like to engage. The following listing, though not intended to be a complete listing, describes many of the activities and uses in which you must not be engaged without obtaining the necessary authorization from BLM:

(a) Use of a right-of-way;

(b) Use, development or processing of BLM resources, including but not limited to, oil and gas, coal, hardrock minerals, mineral materials, and timber;

(c) Temporary uses of land;

(d) Use of easements;

(e) Special recreation uses;

(f) Exploration, mining, milling, or beneficiation;

(g) Commercial filming and/or photography;

(h) Selling materials;

(i) Free use of resources;

(j) Livestock grazing;

(k) Road building and/or use of other means of access or transportation;

(l) Installing utilities;

(m) Developing communication and/or navigation sites;

(n) Cultivating crops;

(o) Developing trash dumps;

(p) Construction of any kind;

(q) Developing canals and ditches;

(r) Putting up billboards or no trespassing signs;

(s) Putting up gates or fences;

(t) Selling objects to the public;

(u) Manufacturing;

(v) Generation of electricity; or

(w) Fluid minerals injection or storage.

General Rules When Your Use is Authorized by BLM

#### § 9264.20 What rules must I follow when BLM has authorized my use on BLM lands?

When you have been authorized to use, occupy, or develop BLM lands or resources, you must:

(a) Comply with the terms, stipulations or conditions set out in the use authorization;

(b) Not continue to use, occupy, or develop BLM lands or resources after the use authorization expires or is revoked, suspended, terminated or canceled or for purposes other than those for which BLM approves or authorizes it;

(c) Comply with any BLM notice or order;

(d) Comply with requirements for restoration, revegetation or curtailment of erosion of the land surface, or any other reclamation measure BLM determines necessary; and

(e) Comply with all other applicable rules and regulations.

#### § 9264.30 Must I get BLM authorization to install oil and gas pipelines or facilities on BLM lands?

Yes. On BLM lands which are outside of the boundaries of an oil and gas leasehold and of any tracts committed to an approved agreement under 43 CFR subpart 3130, you must not install oil or gas pipelines or facilities without a right-of-way, temporary use permit, or other authorization required by 43 CFR part 2800. On BLM lands which are within the boundaries of an oil and gas leasehold or any tracts committed to an approved agreement under 43 CFR subpart 3130, you must not install oil or gas pipelines or facilities without complying with the oil and gas lease terms or the terms of the agreement and with an approved plan of operations.

#### § 9264.50 May I occupy a residence on BLM lands?

(a) Yes, but only if BLM issued you a lease, permit or other authorization under 43 CFR part 2900 or 43 CFR subpart 3715. You must have a use authorization to place, construct, maintain, or use any of the following on BLM lands:

(1) Cabins;

(2) Buildings;
(3) Trailers;
(4) Motor homes;
(5) Tents; or
(6) Other structures, vehicles or equipment used for residential occupancy or other purposes.
(b) You must not occupy BLM lands beyond the time limits provided in § 9262.5(a).

Recreation Uses or Events

**§ 9264.60 What rules must I follow to participate in or sponsor special recreation uses or events on BLM lands?**

(a) You must:
(1) Have a proper BLM permit required by 43 CFR subpart 8372 to conduct a commercial use, a competitive event, an event involving 50 or more vehicles, or any use or event in a special area.
(2) Pay any fee required under 43 CFR subpart 8372;
(3) Post a copy of any permit where all the participants can read it;
(4) Show a copy of the special recreation permit to a BLM employee or a participant, if he or she requests to see it; and
(5) Comply with all other applicable rules and regulations.
(b) You must not knowingly and willfully participate in an event or use subject to the permit requirements of 43 CFR subpart 8372 if BLM has not issued a permit for that event or use.

Use and Occupancy for Development of Locatable Mineral Deposits

**§ 9264.70 What BLM rules must I follow if I want to explore for, mine or process locatable minerals on BLM lands?**

(a) Unless BLM has authorized it, you must not:
(1) Place, construct, maintain, or use residences or structures for occupancy, including but not limited to: cabins, buildings, trailers, motor homes, tents, or other structures and vehicles or other equipment used for occupancy not meeting:
(i) The conditions of occupancy under 43 CFR 3715.2 or 3715.2–1; or
(ii) Any of the standards of occupancy under 43 CFR 3715.5;
(2) Occupy the land before BLM approves a plan of operation or its modification as required by 43 CFR subparts 3802 or 3809;
(3) For activities that do not require a plan of operations under 43 CFR subpart 3802 or that are defined as casual use or notice activities under 43 CFR subpart 3809, occupy the land before consulting with BLM as required by 43 CFR 3715.3;
(4) Occupy the land after BLM has made a determination of non-concurrence because the proposed occupancy or fencing does not conform to 43 CFR 3715.2, 3715.2–1 or 3715.5;
(5) Prevent or obstruct free passage or transit over or through the public lands by force, threat, or intimidation. Reasonable security and safety measures in accordance with 43 CFR subpart 3715 are allowed;
(6) Place, construct, or maintain enclosures, gates or fences, or signs intended to exclude the general public without BLM's concurrence;
(7) Cause a fire or safety hazard, or create a public nuisance;
(8) Conduct activities that do not involve prospecting, mining, or processing operations or uses reasonably incident thereto, including, but not limited to:
(i) Non-mining related habitation;
(ii) Cultivation;
(iii) Animal maintenance or pasturage, and development of small trade or manufacturing concerns;
(iv) Storage, treatment, processing, or disposal of non-mineral, hazardous or toxic materials or waste that are generated elsewhere and brought onto BLM lands; or
(v) Recycling or reprocessing of manufactured material such as scrap electronic parts, appliances, photographic film, and chemicals;
(vi) Searching for buried treasure, treasure trove or archaeological specimens; or
(9) Operate hobby and/or curio shops, cafes, tourist stands, or hunting and fishing camps.
(b) You must:
(1) Comply with any BLM order issued under 43 CFR subpart 3715 within the time frames the order provides;
(2) Comply with the notification, application, and other requirements under 43 CFR 3715.4 relating to an existing use or occupancy; and
(3) Comply with all other applicable rules and regulations.
(c) If a miner or user of BLM lands knowingly and willfully violate the requirements of part 3715 of this title, that person may be subject to arrest and/or trial as provided in that part.

Rangelands

**§ 9264.80 What BLM rules must I follow while I'm on public land rangelands?**

(a) On all public lands, you must not:
(1) Allow livestock or other privately owned or controlled animals to graze on or be driven across BLM lands unless you have a lease or permit and an annual grazing authorization. If you have a grazing bill which has not been paid to BLM, you do not have grazing authorization;
(2) Graze or drive more livestock than the number authorized;
(3) Graze or drive livestock in an area or at a time different from that authorized;
(4) Install, use, maintain, modify, and/or remove range improvements without BLM authorization;
(5) Cut, burn, spray, destroy, or remove vegetation without BLM authorization;
(6) Damage or remove U.S. property without BLM authorization;
(7) Molest, harass, injure, poison, or kill livestock authorized to graze on these lands or remove authorized livestock without the owner's consent; or
(8) Knowingly and willfully make a false statement or representation in base property certifications, grazing applications, range improvement permit applications, cooperative agreements, actual use reports and/or amendments thereto.
(b) On all public lands you must:
(1) Comply with the terms and conditions of your permit, lease, or other grazing use authorization;
(2) Comply with the requirement under 43 CFR 4130.5(c) having to do with counting and tagging livestock;
(3) Re-close any gate or other entry during periods of livestock use; and
(4) Comply with all other applicable rules and regulations.

Forest Resources

**§ 9264.90 What BLM rules concerning forest and vegetative resources must I follow while I'm on BLM lands?**

(a) On BLM lands, you must not:
(1) Cut, remove, or otherwise damage any timber, tree, or other vegetative resource, unless BLM has authorized you to do so by a timber sales contract, sales permit, free use permit, Federal law or regulation, or as allowed under other applicable regulations in this title;
(2) Cut any standing tree, under sale permit or timber sale contract, before a BLM employee has marked it or has otherwise designated it for cutting;
(3) Remove any timber or other vegetative resource cut under sale permit or timber sale contract, except to a place designated for scaling or measurement. Once you move the timber or vegetative resource to the place designated for scaling or measurement, you must not remove it from that place before it is scaled, measured, counted, or otherwise accounted for by a BLM employee;
(4) Stamp, mark with paint, tag, or otherwise identify any tree or other vegetative resources in a manner similar to that BLM employees use to mark or designate a tree or other vegetative

resources for cutting, removal, or transportation;

(5) Transport timber or other vegetative resources without a valid haul ticket except as authorized by Federal law or regulation;

(6) Negligently or intentionally destroy or injure any timber or other vegetative resource during operations under a forest product sale contract, sale permit, or free use permit;

(7) Use timber obtained under a free use permit for any purpose other than for firewood, fencing, building, or other agricultural, mining, manufacturing, and domestic purposes as provided for in 43 CFR subpart 5511;

(8) Export timber cut under a free use permit from the State in which it was cut, except as provided in 43 CFR 5511.1–1(e); or

(9) Cut timber under a free use permit for sale, barter, speculation, or use by others than the permittee.

(b) You must:

(1) Have in your possession any permit or forest sale contract BLM may require if you are a purchaser or a purchaser's agent harvesting or removing forest products (If a BLM employee or any official of a cooperating law enforcement agency acting as a sale inspector, administrator, contracting officer, or law enforcement officer asks to see your permit or sale contract, you must show it to him or her);

(2) Obey State and local laws and ordinances relating to local permits, tagging, and transportation of timber and other vegetative resources;

(3) Obey BLM's regulations on export and substitution in 43 CFR subpart 5400; and

(4) Comply with all other applicable rules and regulations.

## Subpart 9265—Public Use and Collection of BLM Resources

General Rules for Public Use of BLM Resources

### § 9265.1 What resources may I collect from BLM lands for noncommercial purposes?

Except on recreation sites and areas, or where otherwise prohibited and posted, you may collect from BLM lands reasonable amounts of the following for noncommercial purposes:

(a) Commonly available renewable resources such as non-threatened or non- endangered species of flowers, berries, nuts, seeds, cones and leaves;

(b) Nonrenewable resources such as rocks, mineral specimens, common invertebrate fossils and semiprecious gemstones;

(c) Water resources for personal consumption;

(d) Petrified wood as provided under 43 CFR subpart 3622;

(e) Mineral materials as provided under 43 CFR subpart 3621;

(f) Coal as provided under 43 CFR part 3440; and

(g) Dead and down forest products for use in campfires on BLM lands. If you want to collect other forest products, you must comply with 43 CFR subpart 5500.

Wild Horses and Burros

### § 9265.20 What BLM rules must I follow when I handle BLM wild horses and burros?

(a) You must not:

(1) Maliciously or negligently injure or harass a wild horse or burro;

(2) Remove or attempt to remove a wild horse or burro from BLM lands without BLM's authorization;

(3) Destroy a wild horse or burro without BLM's authorization except as an act of mercy;

(4) Sell or attempt to sell, directly or indirectly, a wild horse or burro or its remains;

(5) Commercially exploit a wild horse or burro as defined at 43 CFR part 4700;

(6) Brand a wild horse or burro;

(7) Remove or alter a freeze mark on a wild horse or burro; or

(8) Accept a horse or burro bearing a BLM freeze mark for slaughter or destruction which is not accompanied by a certificate that title to the animal has been transferred out of BLM.

(b) You must:

(1) Treat wild horses and burros humanely in accordance with 43 CFR part 4700;

(2) Comply with BLM orders, terms, and conditions established under 43 CFR subpart 4770;

(3) Comply with terms and conditions of the Private Maintenance and Care Agreement; and

(4) Keep for one year the certificate of title to a horse or burro bearing a BLM freeze mark after you have accepted the animal for slaughter or destruction.

Cave Resources

### § 9265.30 What BLM rules concerning cave resources must I follow while I'm on BLM lands?

Unless BLM has authorized it, you must not:

(a) Destroy, disturb, deface, mar, alter, remove, or harm a significant cave which is described at 43 CFR part 37;

(b) Alter the free movement of any animal or plant life into or out of a significant cave;

(c) Enter a significant cave with the intention of committing any act described in paragraphs (a) or (b) of this section; or

(d) Counsel, procure, solicit, or employ any other person to violate any provision of this section.

### § 9265.31 Can I possess or sell cave resources?

No. Unless BLM has authorized it, you must not possess, consume, sell, barter, or exchange, or offer for sale, barter or exchange, any cave resource, as defined in 43 CFR part 37, from a significant cave with knowledge or reason to know that the resource was removed from a significant cave.

Fish and Wildlife Resources

### § 9265.41 Must I have a valid public land management area stamp to hunt, trap, or fish on BLM lands?

Yes. If you want to hunt, trap, or fish on BLM lands, you must have in your possession a valid public land management area stamp when BLM and the State fish and game agency require it pursuant to a conservation and rehabilitation program implemented under the Sikes Act (16 U.S.C. 670(j)).

### § 9265.42 Must I obey Federal, State, and local laws and regulations concerning conserving and protecting fish, wildlife, and plant resources while I'm on BLM lands?

Yes. On BLM lands you must obey Federal, State, or local laws, regulations, or ordinances concerning conservation or protection of fish, wildlife or plant resources including, but not limited to those concerning:

(a) Hunting, trapping, fishing, catching, molesting, killing, possessing, transporting, buying, selling, or bartering any kind of wild animal or its parts;

(b) Taking the eggs of any bird or fish that came from BLM lands; or

(c) Taking or interfering with a threatened or endangered species.

### § 9265.43 Is Alaska subsistence use of fish and wildlife resources regulated by BLM and other Federal land management agencies?

Yes. The Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*) requires Federal land management agencies in Alaska to provide a management and regulatory program for the subsistence use of fish and wildlife resources when such a program has not been provided for by the State of Alaska. On BLM lands in Alaska, you must not violate any of the subsistence management provisions of 50 CFR part 100.

### § 9265.44 Can I hinder lawful hunting on BLM lands?

No. On BLM lands, you must not engage in any physical conduct that

significantly hinders lawful hunting. The Recreational Hunting Safety and Preservation Act of 1994 (16 U.S.C. 5202) provides that if you violate this regulation you may be subject to civil penalties of not more than $10,000, if the violation involved the use of force or violence or the threatened use of force or violence, against the person or property of another person; and not more than $5,000 for any other violation.

Cultural and Natural Resources

**§ 9265.50 What BLM rules concerning cultural resources must I follow while I'm on BLM lands?**

On BLM lands, unless BLM has authorized it, or as allowed in § 9265.1–1, you must not deface, disturb, remove or destroy any scientific, archaeological, or historic resource.

**§ 9265.60 What BLM rules concerning natural features or resources like plants, soil and minerals must I follow while I'm on BLM lands?**

Unless BLM has authorized it, you must not:

(a) Deface, remove or destroy natural features or resources including plants or their parts, soil, rocks or minerals; or

(b) Use explosive, motorized or mechanical devices, except metal detectors, to help you collect resources under § 9265.1.

Water Resources

**§ 9265.70 What BLM rules must I follow when I use water resources that are on BLM lands?**

Unless BLM has authorized it or as allowed under § 9265.1, you must not:

(a) Divert, transport, or remove any water resource owned by or reserved to the United States and administered by BLM; or

(b) Develop, construct or maintain any improvements, structures, wells, pipelines or dams with the intent of diverting, transporting, or removing any water resources owned by or reserved to the United States and administered by BLM.

## Subpart 9266—Recreation Sites and Areas

General Rules of Public Conduct and Use of BLM Recreation Sites and Areas

**§ 9266.21 What BLM rules concerning public health and safety must I follow while I'm in a BLM recreation site or area?**

Unless BLM has authorized it, you must not:

(a) Clean fish, game, other food, clothing or household articles at any outdoor hydrant, pump, faucet or fountain, or restroom water faucet;

(b) Deposit human waste except in toilet or sewage facilities provided for that purpose; or

(c) Bring an animal, except a Service Animal, to a swimming area.

**§ 9266.22 What BLM rules must I follow while I occupy or use BLM recreation sites and areas?**

(a) Unless BLM has authorized it, you must not:

(1) Pitch a tent, park a trailer, erect a shelter or place camping equipment in an area other than where designated;

(2) Leave personal property unattended longer than 24 hours in an area posted for day use or 72 hours in other areas. Personal property left unattended beyond the time limit:

(i) Will be considered abandoned;

(ii) May be removed by BLM; and

(iii) Is subject to disposition under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484(m));

(3) Build a fire except in a stove, grill, fireplace or ring where BLM provides one;

(4) Enter or use a site or a portion of a site when posted closed to public use;

(5) Occupy a site with more persons or vehicles than the posted limit;

(6) Move any BLM table, stove, barrier, litter receptacle or other campground equipment; or

(7) Camp in a site or area posted for day use only.

(b) You must:

(1) Pay any fees imposed under the Land and Water Conservation Fund Act (16 U.S.C. 460 *l*–6a),as amended, and 36 CFR part 71, or both;

(2) Have BLM permission to reserve any portion of a site or area for another person or party; and

(3) Comply with conditions established and posted by BLM.

**§ 9266.23 What BLM rules must I follow if I want to bring an animal into a BLM recreation site or area?**

Unless the animal is a Service Animal performing a service function for a person with a disability, the animal must either be:

(a) On a leash not longer than 6 feet and secured to a fixed object or under control of a person; or

(b) Otherwise physically restricted at all times.

**§ 9266.24 What BLM rules must I follow if I want to use audio devices or motorized equipment in a BLM recreation site or area?**

You must not operate or use any audio device or motorized equipment at times and in a manner that makes noise that unreasonably disturbs others. Audio devices include radios, televisions, musical instruments, public address systems or other noise producing devices. Motorized equipment includes, but is not limited to, motor vehicles, vehicle engines, model airplanes and cars, and generators.

**§ 9266.25 May I discharge or use fireworks, firearms or weapons in a BLM recreation site or area?**

No. You must not discharge or use fireworks, firearms, or weapons in a BLM recreation site or area or over or from water bodies on or adjacent to BLM lands.

## Subpart 9267—Congressionally Designated Management Areas

General Rules of Public Conduct and Use of BLM National Wilderness Areas

**§ 9267.1 What BLM rules must I follow while I'm in a National Wilderness Area?**

Certain activities in wilderness areas may be allowed as provided in the Wilderness Act or subsequent legislation establishing a particular wilderness area, or as specifically provided for in 43 CFR subpart 8560. Unless your activities are authorized by specific legislation or by BLM, on BLM lands in wilderness areas, you must not:

(a) Conduct commercial enterprises;

(b) Build, construct or maintain any:

(1) Temporary or permanent roads;

(2) Aircraft landing strips;

(3) Heliports, or helispots; or

(4) Structures or installations, including motels, summer homes, stores, resorts, organization camps, hunting and fishing lodges, electronic installations, or similar structures and uses;

(c) Use any motorized equipment, motor vehicles, bicycles, motorboats or other forms of mechanical transport;

(d) Land any aircraft, or drop or pick up any material, supplies, or person by means of aircraft, including a helicopter, hang-glider, hot air balloon, parasail, or parachute;

(e) Deface, disturb, remove or destroy plants or their parts, soil, rocks or minerals except down and dead forest products where allowed for use in campfires;

(f) Enter into or use wilderness areas without a wilderness permit, when BLM requires it;

(g) Conduct or participate in any competitive use; or

(h) Physically alter or deface a natural rock surface for any purpose. If you are mountain or rock climbing or are exploring caves, you must not:

(1) Use any type of drill or permanent fixed anchor, including expansion bolts;

(2) Construct or place permanent artificial hand or foot holds; or

(3) Use glue, epoxies, or other fixatives on a natural surface to facilitate climbing.

General Rules of Public Conduct and Use of BLM National Scenic Trails and Areas

**§ 9267.20 May I operate a motor vehicle on a National Scenic Trail or area?**

You may operate a motor vehicle:

(a) If you are a member of a Federal, State or local agency and you must use a motor vehicle to meet emergencies involving health, safety, fire suppression, or law enforcement;

(b) If you are an adjacent landowner or land user and BLM determines that you require reasonable access to your lands, interests in lands, or timber rights; or

(c) On roads that are designated segments of the National Scenic Trail System posted as open to motorized vehicles.

General Rules of Public Conduct and Use of BLM National Conservation Areas

**§ 9267.40 What BLM rules must I follow when I'm in the San Pedro Riparian National Conservation Area?**

On BLM lands in the San Pedro Riparian National Conservation Area, unless BLM has authorized it, you must not:

(a) Use or operate any unlicensed motor vehicle;

(b) Place or set any wildlife traps, except for health and safety or administrative purposes as determined by BLM;

(c) Discharge a firearm for the purposes of target shooting and plinking or both;

(d) Discharge a firearm in, or fire into, the area between Charleston Road and Highway 92;

(e) Camp or occupy lands in the conservation area longer than 7 days within any period of 21 consecutive days;

(f) Camp in areas outside developed campgrounds without a BLM permit;

(g) Build or maintain a campfire outside an area designated for that purpose;

(h) Camp overnight in a Research Natural Area;

(i) Tether or corral horse(s) in campgrounds or picnic areas where facilities for horses have not been provided; or

(j) Use a metal detector.

**§ 9267.43 What other BLM rules must I follow when I'm in the Snake River Birds of Prey National conservation Area?**

You must not:

(a) Discharge a firearm during a period of time from March 1 to August 31, inclusive. You may discharge a firearm for the purposes of a lawful hunt during an established hunting season. The State of Idaho Department of Fish and Game establishes the hunting season; or

(b) Enter the Idaho National Guard Military Area. Idaho Military Division (IMD) personnel, National Guard units operating under IMD authorization, BLM personnel, and livestock operators authorized by BLM are exempt from this prohibition.

## Subpart 9268—Administratively Established Management Areas

General Rules of Public Conduct and Use of BLM Administratively Established Management Areas

**§ 9268.10 What BLM rules must I follow while I'm in an outstanding natural area?**

On BLM lands in outstanding natural areas, you must not use, occupy, construct, or maintain authorized facilities in a manner that unnecessarily detracts from the quality of the outstanding natural features of the area.

**§ 9268.20 What BLM rules must I follow while I'm in a research natural area?**

Unless BLM has authorized it, you must not use, occupy, construct, or maintain facilities in a manner that is destructive or inconsistent with the purpose of the research natural area.

**§ 9268.30 What BLM rules must I follow while I'm in a Fossil Forest Research Natural Area?**

On BLM lands in the Fossil Forest Research Natural Areas, unless BLM has authorized it, you must not:

(a) Collect, excavate, or remove petrified wood either for free use as permitted under 43 CFR 3622.3 of this title or for commercial sale as permitted under 43 CFR 3610.1;

(b) Operate motorized vehicles; or

(c) Collect, excavate, remove, destroy, deface, damage, vandalize, or otherwise alter any paleontological resources.

**§ 9268.50 What BLM rules must I follow while I'm in a primitive area?**

On BLM lands in primitive areas, unless BLM has authorized it, you must not:

(a) Operate a motorized vehicle or land an aircraft except for essential search and rescue, fire control, or other emergency or administrative operations;

(b) Construct facilities in or on a primitive area except in connection with authorized nonrecreation uses and as necessary for the protection and administration of the area; or

(c) Conduct nonrecreational authorized activities except under conditions specified by BLM to preserve the primitive characteristics of the area.

General Rules of Public Conduct and Use of BLM Resource Conservation Areas

**§ 9268.60 What BLM rules must I follow while I'm in the Empire-Cienega Resource Conservation Area?**

On BLM lands in the Empire-Cienega Resource Conservation Area, unless BLM has authorized it, you must not:

(a) Build or maintain a campfire during high or extreme fire danger periods (Local BLM fire management personnel determine high or extreme fire danger periods. Members of the public may obtain this information from local BLM offices or by notices and signs placed at the affected public land areas); or

(b) Camp or occupy longer than 14 days within 6 consecutive months.

## Subpart 9269—Local Closures, Restrictions, and Rules

Orders to Close or Restrict Use of a Described Area

**§ 9269.1 May BLM issue orders to close or restrict my use of a described area?**

Yes. Subject to the continuing operation of the public land laws and the mining law and the rights created under them, BLM may issue orders to close or restrict your use of a described area over which BLM has jurisdiction for a reasonable time period.

**§ 9269.2 Under what circumstances may BLM issue orders to close or restrict my use of a described area?**

In order to protect the public and assure the proper use, conservation and protection of resources, BLM may issue closure orders which restrict public use and travel within described areas of BLM lands for a reasonable time period in order to do one or more of the following:

(a) Prevent or control fires or other unsafe conditions;

(b) Prevent or control disease;

(c) Prevent interference or delay of authorized mineral development, timber and livestock operations, or other authorized use of the lands;

(d) Protect property, roads, or trails and prevent excessive erosion;

(e) Protect threatened, endangered, rare, unique, or vanishing species of plants, animals, birds or fish, or special biological communities and prevent unnecessary destruction of all other plant life and wildlife habitat;

(f) Protect the natural environment and resources and objects or places of historical and cultural value or

archeological, geological or paleontological interest;

(g) Protect scientific studies, resources, experiments or investigations and preserve scientific values;

(h) Protect public safety;

(i) Protect public health; or

(j) Establish reasonable rules of public conduct for a described area, including, but not limited to:

(1) Overnight camping restrictions;

(2) Restrictions on number of camping occupants per site;

(3) Motorized vehicle operation and parking restrictions;

(4) Camping and occupancy stay limits;

(5) Restrictions on shooting or discharging firearms;

(6) Use permit requirements;

(7) Collecting and gathering plant, animal, or mineral resources;

(8) Building, maintaining, attending or using a fire; or

(9) Restrictions that are complimentary to existing State and local laws and regulations concerning use of BLM lands and resources.

**§ 9269.3 What must BLM include in each order that closes or restricts use of a described area?**

Each order BLM issues must:

(a) Describe the area, lands, roads, trails or waterways that are closed or restricted;

(b) Specify the uses that are restricted;

(c) Specify the times of day or other reasonable period of time during which the area is closed and/or uses are restricted, including a date certain upon which the closure will end—if a closure is reasonably necessary for a longer time period, BLM will issue an order to extend the closure;

(d) Identify those persons who may, depending on the circumstances warranting the closure or restriction, be exempt from the closure or restriction, including one or more of the following:

(1) Persons with a permit specifically authorizing access to or use in the otherwise closed or restricted area;

(2) Owners or lessees of land in the area;

(3) Residents in the area;

(4) Any Federal, State, or local officer, or member of an organized rescue or fire fighting force in the performance of an official duty;

(5) Persons engaged in a business, trade, or occupation in the area;

(6) Any other person meeting exemption requirements specified in the order, including any person who has rights or interests established under the public land laws or mining law, such as grazing allottees and mining claim holders; and

(e) Describe each circumstance listed in § 9269.2 which reasonably warrant the closure or restriction.

**§ 9269.4 Must BLM orders closing or restricting use of a described area be posted?**

Yes. BLM orders closing or restricting use of an area must be posted:

In the local BLM Office with jurisdiction over the area to which the order applies; and at places near and/or within the area to which the closure or restriction applies, in a manner and location that reasonably notifies users. If you are planning to use or visit BLM lands, BLM advises you to contact a local BLM office to get further information about specific closures or restrictions which may be applicable to the area you plan to use or visit.

**§ 9269.5 Must an order closing or restricting use of a described area be published in the Federal Register before it becomes effective?**

Yes. Before an order can become effective, BLM must publish it in the Federal Register. BLM will specify in the published notice the reason why a deferred effective date and advanced public participation would be impracticable, unnecessary, or contrary to the public interest.

**§ 9269.6 What is the maximum duration of a closure or restriction order under this section?**

BLM may issue a closure or restriction order for a reasonable time period, not to exceed 12 months.

**§ 9269.7 What must BLM do to close or restrict use of a described area for longer than 12 months?**

In order for BLM to extend a closure order beyond 12 months, BLM will comply with the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553).

**§ 9269.8 Must BLM consult with the State fish and game department for closures and restrictions relating to hunting and fishing?**

Yes. Except in emergencies, closures and restrictions relating to hunting and fishing are put in effect only after BLM consults with the appropriate State fish and game department (see 43 U.S.C. 1732(b) and 43 CFR part 24).

**§ 9269.9 What are the penalties for violating a closure or restriction order?**

If you violate a closure or restriction order, you are subject to the penalties provided in 43 CFR 9260.8.

Supplemental and Special Rules

**§ 9269.21 What are supplemental and special rules?**

BLM issues supplemental and special rules to protect people, property, BLM lands, and resources. Supplemental and special rules are local in scope and may be temporary in duration, and are meant to conform to State and local needs and specific resource management planning objectives. They are enforceable as provided in § 9269.25 of this title.

**§ 9269.22 Where can I see a copy of a supplemental or special rule affecting a particular area?**

You may inspect rules:

(a) In each local BLM Office having jurisdiction over the lands, sites or facilities affected; and

(b) As posted near and/or within the lands, waters, sites or facilities affected.

**§ 9269.23 Must a supplemental or special rule be published in the Federal Register before it becomes effective?**

Yes. Before a supplemental or special rule becomes effective, BLM must comply with the requirements of the Administrative Procedures Act (5 U.S.C. 553), including publishing the rule in the Federal Register and a public comment period. BLM may also publish supplemental and special rules in a newspaper of general circulation in the affected vicinity, or make the rule available to the public in another way BLM considers appropriate.

**§ 9269.24 Must BLM consult with the State fish and game department for supplemental and special rules relating to hunting and fishing?**

Yes. Supplemental and special rules relating to hunting and fishing are put in effect only after BLM consults with appropriate State fish and game departments (see 43 U.S.C. 1732(b) and 43 CFR part 24).

**§ 9269.25 What are the penalties for violating a supplemental or special rule?**

If you do not comply with a supplemental or special rule, you are subject to the penalties provided in 43 CFR 9260.8.

[FR Doc. 96–28479 Filed 11–6–96; 8:45 am]

BILLING CODE 4310–84–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1, 2, 14, 15, 36, 52, and 53**

**[FAR Case 95–029]**

**RIN 9000–AH21**

## Federal Acquisition Regulation; Part 15 Rewrite—Phase I

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of public meeting and extension of comment period.

**SUMMARY:** The FAR Council and the FAR Part 15 (Contracting By Negotiation) Rewrite Committee are providing a forum for the exchange of ideas and information with Government and industry personnel by holding public meetings and soliciting public comments. The goal is to ensure an open dialogue between the Government and the general public on this important initiative. In order to provide a greater outreach to small businesses and other interested parties for whom a public meeting located in the Washington DC area is not convenient, a second public meeting on the proposed rule has been scheduled. Interested parties are invited to present statements or comments on the Phase I proposed Part 15 rewrite at the public meeting, scheduled for the date and location set forth below. In order to permit time for public comments to be submitted by those attending the second public meeting, the public comment period for the proposed rule, which was published in the Federal Register on September 12, 1996 (61 FR 48380), is extended through November 26, 1996.

**DATES:** *Public Meeting:* A public meeting will be conducted at the address shown from 9 a.m.—12 p.m., local time, on November 18, 1996. Representatives of the FAR Part 15 Rewrite Committee will remain available at the meeting site as long as members of the general public wish to dialogue on topics relating to the proposed rewrite, including proposed changes regarding the competitive range.

*Statements:* Statements from interested parties for presentation at the public meeting should be submitted, to the extent feasible, to the address below on or before November 15, 1996.

*Comments:* Comments on the proposed rule should be submitted in writing to the GSA (address below) on or before November 26, 1996.

**ADDRESSES:** *Public Meeting:* The location of the public meeting is Ramada Inn Benjamin Ranch, 6101 East 87th Street (I–435 and 87th Street Exit), Kansas City, MO, Sierra Rooms 1, 2, and 3, telephone (816) 765–4331. Individuals wishing to attend the meeting, including individuals wishing to make presentations on the topic scheduled for discussion, should contact Jill Dickey, telephone (816) 926–7203, facsimile (816) 823–1167.

*Comments/Statements:* Interested parties should submit written comments/statements to: General Services Administration, FAR Secretariat (VRS), Attention: Beverly Fayson, 18th and F Streets, NW, Room 4037, Washington, DC 20405. Please cite FAR case 95–029 in all correspondence related to this issue.

*Electronic Access:* This proposed rule is posted on the Acquisition Reform Network (ARNET) at www.arnet.gov. Comments may be submitted electronically at that address.

**FOR FURTHER INFORMATION CONTACT:** For logistics information regarding the public meeting contact Jill Dickey, telephone (816) 926–7203, facsimile (816) 823–1167. For general information, contact the Part 15 Rewrite Committee Chair, Melissa Rider, telephone (703) 602–0131, facsimile (703) 602–0350. Please cite FAR case 95–029.

**SUPPLEMENTARY INFORMATION:** The FAR Council is conducting a second public meeting to discuss FAR Case 95–029, FAR Part 15 Rewrite—Phase I which was published on September 12, 1996 (61 FR 48380).

The Phase I proposed rule is a rewrite of FAR Subparts 15.0, 15.1, 15.2, 15.3. 15.4, 15.6, and 15.10. The rule proposes to: Enhance efficiency by reinforcing the contracting officer's ability to minimize the cost of doing business with the Government; eliminate unnecessary effort by both the Government and industry to support prices set by free-market forces; ensure that firms seeking to do business with the Government have an accurate understanding of the importance of evaluation criteria; allow the Government to make informed decisions about which offerors are truly most likely to receive award; allow both industry and Government to rely more on agreements reached during discussions without putting offerors through the expense of developing revised proposals; and reinforce the concept of eliminating an offeror without requiring a proposal revision, if discussions with the offeror indicate that a proposal revision would waste the time and resources of both the offeror and the Government.

Major policy shifts in the Phase I proposed rule include:

- A narrower definition of ''discussions'' limited to communications after establishment of the competitive range. This is a much more narrow definition than the current one (which pre-dates CICA) and very strictly conforms with the statute. This supports a much more open and dynamic interchange between the Government and offerors before establishment of the competitive range, thus allowing the Government to make an informed decision when limiting the competitive range and is the cornerstone of all of the rest of the major policy shifts.
- A shift in competitive range policy to encourage retaining only the offerors with the greatest likelihood of award and allowing the contracting officer to further limit the competitive range in the interest of efficiency. This is an evolutionary step from our authority to award without discussions. We believe this will focus an offeror's attention on providing their best deal in the initial proposal.
- Encouragement of communication with industry throughout the solicitation process to ensure competitive range determinations are informed decisions. The rule allows disclosure of perceived deficiencies before establishment of the competitive range to resolve ambiguities and other concerns. These communications are not ''discussions.''
- Elimination of ''minor clarifications'' except for use in award without discussions, once again in strict compliance with statute.
- Revision of the ''late'' rules for negotiated acquisitions to make the offeror responsible for timely delivery of its offer, and to allow late offers to be considered if doing so is in the best interests of the Government. This was done to clarify the responsibility of the offeror to get the offer to the location specified, yet allow the Government to take advantage of the ''best deal'' in each situation.

The proposed rule also specifically authorizes practices currently in use at some agencies including:

- Comparison of one offer to another, after the proposals have been evaluated against the criteria in the solicitation;
- Release of the Government estimate to all offerors, when it makes sense to do so; and

• Amendment of the solicitation, at any time prior to award, including amendment of the evaluation factors and subfactors.

• Changes have been proposed to support streamlined source selections including:

• A new definition of ''best value'' at Part 2, to remove confusion that may arise from several slightly different definitions. This supports the concept of presenting a single face to industry.

• A description of two common source selection processes-award to the low cost technically acceptable offeror, and trade-offs among cost and other factors. The intent is to emphasize that a variety of processes can be used, that source selection need not be complex, and to promote tailoring of processes to match the complexity of the instant requirement. We hope this will allow field contracting activities to put resources where they will get the biggest pay-off and not make source selections more complicated than necessary.

• Authorization to use techniques such as multi-phase proposals or oral presentations, once again to allow tailoring of the source selection process to match the requirement.

• Guidance on communications between the Government and industry prior to release of the solicitation. Within the limitations of the prohibition on giving information necessary to prepare a proposal to one interested party without sharing the information with all other interested parties, agencies are encouraged to share information freely with industry. The improved communications should make it easier for potential offerors to make more aggressive bid/no bid decisions, thereby allowing them to apply their limited bid and proposal dollars where they will get the best potential pay-off.

• A new Model Contract Format (MCF), based on an Army/Air Force proposal, that will replace the uniform contract format. The MCF format has only six sections, which focus on usefulness to the customer at all levels by highlighting tailored information and locating all financial and contract administration data together. We hope this will improve the payment process and make the document more ''user-friendly.''

• A related proposed rule, FAR case 96–303, Competitive Range Determinations, was published in the Federal Register on July 31, 1996 (61 FR 40116). Since it is important to consider the proposed rule for FAR Case 96–303, Competitive Range Determinations, in the broader context of FAR Part 15 as a whole, the FAR Council has determined that comments about both cases may be entertained during the second public meeting for the Part 15 Rewrite—Phase I. However, note that there are differences between the Competitive Range case and the FAR Part 15 Rewrite—Phase I case that are due primarily to the different baselines used. The Competitive Range case uses the baseline of the current FAR Parts 15 and 52, while the FAR Part 15 Rewrite—Phase I case proposes to reorganize and revise Parts 15 and 52. A final rule for the Competitive Range case will be issued well in advance of the final rule for the Part 15 Rewrite. Therefore, it may be viewed as an evolutionary step in a process that will culminate in the pending broader revision. Notwithstanding the minor differences between the cases, we encourage interested parties to express their positions on this rule as part of the second public meeting.

Dated: November 1, 1996.

Jeremy Olson,

*Acting Director, Federal Acquisition Policy Division.*

[FR Doc. 96–28635 Filed 11–6–96; 8:45 am]

**BILLING CODE 6820–EP–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 48 CFR Part 1552

**[FRL–5647–4]**

## Acquisition Regulation; Limitation of Future Contracting

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to revise its acquisition regulation (48 CFR Chapter 15) to clarify that the existing coverage regarding ineligibility of Headquarters policy support contractors to enter into EPA response action contracts, unless otherwise authorized by the Contracting Officer, also renders EPA response action contractors ineligible for award of Headquarters policy support contracts, unless otherwise authorized by the Contracting Officer.

**DATE:** Comments should be submitted not later than January 6, 1997.

**ADDRESSES:** Written comments should be submitted to the contact listed below at the following address: U.S. Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street, SW., Washington, DC 20460. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: Senzel.Louise@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 format or ASCII file format. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed on-line at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** Louise Senzel, Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–6204.

**SUPPLEMENTARY INFORMATION:**

A. Background

Federal Acquisition Regulation 9.504 requires Contracting Officers to analyze planned acquisitions to identify and evaluate potential organizational conflicts of interest, and to avoid, neutralize, or mitigate significant potential conflicts of interest (COI) before award. In addition, FAR 9.507–2(a) indicates that a contractor's eligibility for future prime contract or subcontract awards may be restricted as a condition of a contract award because of COI reasons. Two underlying conflict of interest principles as expressed in FAR 9.505 are to prevent the existence of conflicting roles that might bias a contractor's judgment and to prevent unfair competitive advantage.

EPAAR 1552.209–74, Alternate V, ''Limitation of Future Contracting (Headquarters Support)'', paragraph (b) states that if a Contractor, under the terms of a policy support contract, is required to develop specifications or statements of work that are later incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in the solicitation as a prime contractor or subcontractor under an ensuing EPA contract.

Additionally, the basic version of Alternate V states that Contractors performing Headquarters policy support work, during the life of the contract, will be ineligible to enter into a contract with EPA to perform response action work, unless otherwise authorized by the Contracting Officer. It would be inappropriate for a Contractor to participate in Headquarters policy support work, which may involve providing assistance in the policy development process for response action work, and then to perform the response action work which may be affected by the resulting policy for

which the Contractor provided assistance.

Similarly, in 1552.209–74, ''Limitation of Future Contracting'' (the basic clause and Alternates I, II, III, IV, and VI), Contractors are ineligible to enter into a contract or subcontract for response action contract projects for which the Contractor has developed the statement of work or the solicitation package.

Logically, and by implication, Contractors and subcontractors performing response action contracts would similarly be ineligible for the award of a Headquarters policy support contract or subcontract, unless otherwise authorized by the Contracting Officer. It would be inappropriate for a Contractor or subcontractor performing response action work to participate in a Headquarters policy support contract, as a prime contractor or a subcontractor, which may involve providing assistance in the policy development process for response action work. This amendment will make this ineligibility clear and definitive. The Agency does not consider this amendment a substantial change, since this amendment clarifies the existing ineligibility in Alternate V.

B. Executive Order 12866

The proposed rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

D. Regulatory Flexibility Act

The EPA certifies that this proposed rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the proposed rule impose no reporting, recordkeeping, or any compliance costs.

E. Unfunded Mandates

This proposed rule will not impose unfunded mandates on state or local entities, or others.

F. Regulated Entities

EPA contractors are entities potentially affected by this action. Specifically, those entities competing under solicitations for negotiated procurements will be affected.

| Category | Regulated entity |
|---|---|
| Industry ..... | EPA contractors. |

List of Subjects in 48 CFR Part 1552

Government procurement.

Therefore, 48 CFR Chapter 15 is proposed to be amended as set forth below:

1. The authority citation for part 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1552.209–74 is amended by redesignating paragraphs (e), (f), (g), (h), and (i) as (f), (g), (h), (i), and (j) and by adding a new paragraph (e) to read as follows:

**1552.209–74 Limitation of Future Contracting (XX 1996).**

* * * * *

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

* * * * *

3. Section 1552.209–74, Alternate I is amended by redesignating paragraphs (e), (f), (g), (h), and (i) as (f), (g), (h), (i), and (j) and by adding a new paragraph (e) to read as follows:

**1552.209–74 Limitation of Future Contracting Alternate I (TCRR) (XX 1996).**

* * * * *

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work, including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

* * * * *

4. Section 1552.209–74, Alternate II is amended by redesignating paragraphs (e), (f), (g), (h), and (i) as (f), (g), (h), (i), and (j) and by adding a new paragraph (e) to read as follows:

**1552.209–74 Limitation of Future Contracting Alternate II (TAT) (XX 1996).**

* * * * *

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work, including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

* * * * *

5. Section 1552.209–74, Alternate III is amended by redesignating paragraphs (c), (d), (e), and (f) as (d), (e), (f), and (g) and by adding a new paragraph (c) to read as follows:

**1552.209–74 Limitation of Future Contracting Alternate III (ESAT) (XX 1996).**

* * * * *

(c) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work, including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

* * * * *

6. Section 1552.209–74, Alternate IV is amended by redesignating paragraphs (e), (f), (g), (h), and (i) as (f), (g), (h), (i), and (j) and by adding a new paragraph (e) to read as follows:

**1552.209–74 Limitation of Future Contracting Alternate IV (TES) (XX 1996).**

* * * * *

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

* * * * *

7. Section 1552.209–74, Alternate VI is amended by redesignating paragraphs (e), (f), (g), (h), (i), and (j) as (f), (g), (h), (i), (j), and (k) and by adding a new paragraph (e) to read as follows:

**1552.209–74 Limitation of Future Contracting Alternate VI (Site Specific) (XX 1996).**

* * * * *

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

* * * * *

Dated: October 28, 1996.

Betty L. Bailey,

*Director, Office of Acquisition Management.*

[FR Doc. 96–28423 Filed 11–6–96; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 300

**[I.D. 071296D]**

## International Code of Conduct for Responsible Fisheries; Draft Implementation Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent to modify a draft implementation plan.

**SUMMARY:** On July 25, 1996, NMFS announced the availability of a Draft Implementation Plan for the Code of Conduct for Responsible Fisheries (Plan) in the Federal Register and requested comments by September 23, 1996. Based upon these comments, NMFS has decided to redraft the Plan. When the revised draft Plan is completed, NMFS will again notify the public of its availability for comment.

**ADDRESSES:** Any questions regarding this notice of intent may be directed to Matt Milazzo, International Fisheries Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Sprinq, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Matt Milazzo, 301-713-2276.

**SUPPLEMENTARY INFORMATION:** For background and rationale for the Plan, please refer to the notice of availability published on July 25, 1996 (61 FR 38703).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 31, 1996.

Richard W. Surdi,

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 96–28672 Filed 11–06–96; 8:45 am]

BILLING CODE 3510–22–F

# Notices

Federal Register
Vol. 61, No. 217
Thursday, November 7, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

November 1, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this information. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Department Clearance Officer, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

- Animal and Plant Health Inspection Service

*Title:* Animal Welfare.

*Summary:* Information collected includes health certificates, program of veterinary care, application for license and record of acquisition, disposition and transportation of animals.

*Need and use of the Information:* The information is used to ensure that dealers, exhibitors, research facilities, carriers, etc. are in compliance with the Animal Welfare Act and regulations and standards promulgated under authority of the Act.

*Description of Respondents:* Business of other for-profit

*Number of Respondents:* 8,564.

*Frequency of Responses:* Recordkeeping; reporting: On occasion; weekly; semi-annually; annually

*Total Burden Hours:* 100,262.

- Food and Consumer Service

*Title:* Federal-State Special Supplemental Food Program Agreement

*Summary:* This collection is the contract between USDA and WIC State agencies, which empower the Department to release funds to the States for the administration of the WIC program in the jurisdiction of the State in accordance with the provisions of 7 CFR Part 246.

*Need and use of the Information:* Data is needed to monitor compliance with the provisions of the program.

*Description of Respondents:* State, Local, or Tribal Government; individuals or households; business or other for-profit; not-for-profit institutions; farms; Federal Government

*Number of Respondents:* 100.

*Frequency of Responses:* Recordkeeping; Reporting: Annually.

*Total Burden Hours:* 20.

- Foreign Agricultural Service

*Title:* Financing Commercial Sales of Agricultural Commodities Under Title I, Public Law 480

*Summary:* Title I, of the Agricultural Trade Development and Assistance Act of 1954 provides for U.S. Government financing of sales of U.S. agricultural commodities to foreign countries. Within the U.S. government, the Foreign Agricultural Service (FAS) of the Department of Agriculture (USDA) is responsible for administering Title I agreements.

*Need and Use of the Information:* The data is needed to administer the program within the guidelines set forth under the Act.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 73.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 455.

- Commodity Credit Corporation

*Title:* General Regulations Governing Commodity Loans for 1996 and Subsequent Crops—7 CFR Part 1421.

*Summary:* The Secretary of Agriculture is authorized to make loans available to eligible producers on eligible commodities.

*Need and Use of the Information:* These requirements are needed to insure the integrity of the loan program and that only eligible producers receive the benefits of the loan program. Without enforcing this authority, CCC could not meet its responsibilities.

*Description of Respondents:* Farms.

*Number of Respondents:* 364,240.

*Frequency of Responses:* Reporting: On occasion; annually.

*Total Burden Hours:* 438,740.

- Agricultural Marketing Service

*Title:* Raisins Produced from Grapes Grown in California, Marketing Order No. 989.

*Summary:* The market order sets provision regulating the handling of raisins grown from grapes produced in California. Information is collected on production, handling, and disposition of the crop.

*Need and Use of the Information:* The information is used to recommend marketing policy, handler compliance, levy assessments, and to prepare periodic reports.

*Description of Respondents:* Business or other for-profit; farms.

*Number of Respondents:* 1,084.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; weekly; quarterly; annually; biennially.

*Total Burden Hours:* 2,543.

- Food and Consumer Service

*Title:* Determining Eligibility for Free and Reduced Price Meals and Free Milk—7 CFR Part 245.

*Summary:* Part 245 sets forth policies and procedures for use by State agencies and local level organizations administering the USDA child nutrition programs in providing meals free or at a reduced price to eligible children.

*Need and Use of the Information:* Information is needed to determine which children are eligible for benefits. State agencies, schools, and nonprofit institutions participating shall keep such accounts and records as may be necessary to determine whether there has been compliance with the Act and the associated regulations.

*Description of Respondents:* Individuals or households; Not-for-profit institutions; State, Local, or Tribal Government.

*Number of Respondents:* 4,260,648.

*Frequency of Responses:* Recordkeeping; Reporting: Annually; Biennially; Triennial.

*Total Burden Hours:* 1,027,525.

Larry Roberson,

*Deputy Departmental Clearance Officer.*

[FR Doc. 96–28610 Filed 11–6–96; 8:45 am]

BILLING CODE 3410–01–M

## Forest Service

### Southwest Washington Provincial Advisory Committee Meeting Notice

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Southwest Washington Provincial Advisory Committee will meet on November 21, 1996, at the Educational Service District office in Vancouver, Washington. The purpose of the meeting is to update and finalize subcommittee tasks from previous meetings, provide updates on previous meeting topics, and include presentations on new information that will contribute to the effectiveness of the Committee. The meeting will begin at 9:00 a.m. and continue until 3:30 p.m.

Agenda items to be covered include: (1) Subcommittee recommendations on Advisory Committee vision and work priorities, (2) Presentation on ''What the Forest looks like'', (3) Update on Advisory Committee Charter Renewals, (4) Forest Plan Allocation presentation, (5) Subcommittee update on socioeconomic health measures, (6) Public Open Forum, (7) Update on flood restoration process, (8) Discussion on Advisory Committee accomplishments and (9) Presentation on State Steelhead ''prelisting''.

All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The open forum provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. This open forum is scheduled as part of agenda item (6) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Sue Lampe, Public Affairs, at (360) 750–5091, or write Forest Headquarters Office, Gifford Pinchot National Forest, P.O. Box 8944, Vancouver, WA 98668–8944.

Dated: October 30, 1996.

TED C. STUBBLEFIELD,

*Forest Supervisor.*

[FR Doc. 96–28634 Filed 11–6–96; 8:45 am]

**BILLING CODE 3410–11–M**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Notice

**DATE AND TIME:** Friday, November 15, 1996, 9:30 a.m.

**PLACE:** U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

Agenda

I. Approval of Agenda

II. Approval of Minutes of October 25, 1996 Meeting

III. Announcements

IV. ''Equal Educational Opportunity Project Series: Volume I'' Report

V. Future Agenda Items

11:00 a.m. Briefing on Civil Rights, Immigrant Rights, and Related Issues Presented by Welfare Reform.

**CONTACT PERSON FOR FURTHER INFORMATION:** Barbara Brooks, Press and Communications (202) 376–8312.

Dated: November 5, 1996.

Miguel A. Sapp,

*Parliamentarian.*

[FR Doc. 96–28796 Filed 11–5–96; 2:31 pm]

**BILLING CODE 6335–01–M**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration (EDA), Commerce.

**ACTION:** To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 09/24/96–10/25/96

| Firm name | Address | Date petition accepted | Product |
|---|---|---|---|
| Hudson Standard Corporation. | 90 South Street, Newark, NJ 07114 ..... | 9/27/96 | Electric household appliances—table ranges, waffle irons, broilers, toaster, and convection ovens. |
| Agora Sales, Inc ..... | 2101 28th Street North, St. Petersburg, FL 33713. | 09/30/96 | Bags with textile outer surface of man made fibers. |
| Shiloh Lure Company ..... | 302 W. First Street, Montrose, MO 64770 | 10/01/96 | Fishing lures. |
| Adcom ..... | 11 Elkins Road, East Brunswick, NJ 08816. | 10/01/96 | Electric power amplifiers for home and consumer use. |
| Rich-Mar Corporation ..... | P.O. Box 879, Route 9, Inola, OK 74036 | 10/01/96 | Therapeutic ultrasonic appliances, muscle stimulators and gels. |
| Warrior Enterprises, Inc ..... | 5103 E Roadrunner, Mesa, AZ 85202 ..... | 10/03/96 | Remanufactured engine accessories for civil aricraft. |
| Ver-Sa-Til Associates, Inc | 18400 West 77th Street, Chanhassen, MN 55317. | 10/03/96 | Machines metal components of computer floppy disk drives, automobile and defense systems. |
| The Kraissl Company, Inc | 299 Williams Avenue, Hackensack, NJ 07601. | 10/03/96 | Heavy duty simplex and duplex strainers and filters for protecting equipment in pipeline service. |
| Kozak Auto Dry Wash, Inc | 6 South Lyon Street, Batavia, NY 14020 | 10/03/96 | Cleaning cloths of heavy napped cotton chemically treated to clean automotive finishes and furniture. |
| Molded Products, Inc ..... | 11524 East 58th Street, Tulsa, OK 74166 | 10/15/96 | Rack and pinion rubber boots, seals, brackets and diaphragms. |
| Saco Brick Company ..... | 102 Industrial Park Road, Saco, MA 04072. | 10/17/96 | Foundation concrete blocks, paving stones and bricks, and masonry products. |
| J & C Ferrara Company, Inc | 104 Richards Avenue, North Attleboro, MA 02761. | 10/18/96 | Precious metal jewelry—platinum, gold, and sterling silver charms, earrings, rings used with gems. |
| Atlas Plastic Products Corporation. | 10550 72nd Street, N. #504, Largo, FL 33777. | 10/21/96 | Injection molds for plastic parts and plastic resins. |
| Leader Manufacturing Company, Inc. | 3693 Forest Park Boulevard, St. Louis, MO 63108. | 10/21/96 | Headwear. |
| Chiles Power Supply Company dba Heatway. | 3131 W. Chestnut Expressway, Springfield, MO 65802. | 10/23/96 | Underground/subfloor, radiant, hydronic heating systems and supplies. |

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 09/24/96–10/25/96—Continued

| Firm name | Address | Date petition accepted | Product |
|---|---|---|---|
| Purethane, Inc | One Purethane Place, West Branch, IA 52358. | 10/23/96 | Urethane arm and wrist rests for furniture, appliance handles and urethane and vinyl automotive components. |
| Bassett Woodworks | 11905 Golden Gate Road, El Paso, TX 79936. | 10/23/96 | Cabinets of wood for permanent installation. |
| Manufacturing Group of America, Inc. | 2841 Pierce Street, Dallas, TX 75233 | 10/25/96 | Wood cabinets. |
| United States Forgecraft Corporation. | P.O. Box 387, Fort Smith, AR 72902 | 10/25/96 | Forged and electro-plated safety clasps, made of high quality metals. |

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: October 25, 1996.

Lewis R. Podolske,

*Director, Trade Adjustment Assistant Division.*

[FR Doc. 96–28591 Filed 11–6–96; 8:45 am]

**BILLING CODE 3510–24–M**

## International Trade Administration

**[A–583–009]**

## Color Television Receivers, Except for Video Monitors, From Taiwan; Amended Final Results of Antidumping Duty Administrative Review Pursuant to Court Remand

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of amendment to final results of antidumping duty administrative review pursuant to Court remand.

**SUMMARY:** On September 19, 1996, in the case of *Zenith Electronics Corporation* v. *United States, AOC International, Inc. et al.,* Consolidated Court No. 87 F.3d 426 (Fed. Cir. 1996) (*Zenith*), the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department) results of redetermination on remand demand September 3, 1996.

On February 12, 1996, the Court of Appeals for the Federal Circuit (CAFC) upheld the Department's methodology for determining direct and indirect warranty expenses for purposes of making a circumstance-of-sale (COS) adjustment in calculating AOC International Inc.'s (AOC) final margin for the first administrative review of color television receivers, except for video monitors, from Taiwan, for the period October 19, 1983 through March 31, 1985 (see *Color Television Receivers, Except for Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review,* (CTVs from Taiwan) 51 FR 46895 (1986). Subsequently, the CAFC remanded the case to the CIT for recalculation of dumping margins in a manner consistent with the CAFC's affirmation in *Zenith* of the Department's definition of ''direct'' as those expenses that vary with the quantity sold and ''indirect'' as those expenses that do not vary with the quantity sold. This CAFC decision reversed the CIT's first remand of September 11, 1989, wherein it ordered the Department to make reasonable allowances for differences between warranty expenses in the U.S. and home markets. In accordance with that order, which was subsequently reversed by the February 12, 1996 CAFC decision, the Department treated all home market warranty expenses as direct expenses.

On July 18, 1996, the CIT remanded the case to the Department to recalculate AOC's dumping margin in accordance with the CAFC's February 12, 1996 ruling in *Zenith*. In response to the CIT's remand, the Department recalculated AOC's dumping margin in accordance with *Zenith* and filed the remand determination with the CIT on September 3, 1996. The CIT subsequently affirmed the remand determination on September 19, 1996.

These amended final results for AOC and the subsequent liquidation instructions to the U.S. Customs Service (Customs Service) mark the conclusion of the first administrative review of CTVs from Taiwain.

**EFFECTIVE DATE:** November 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** Maureen McPhillips or John Kugelman, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482-3019 or (202) 482-0649, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 29, 1986, the Department published in the Federal Register the final results of the first administrative review of the antidumping duty order on CTVs from Taiwan (51 FR 46895) for the period of review (POR) October 19, 1983 through March 31, 1985, and announced its intent to instruct the Customs Service to assess antidumping duties on all appropriate entries.

Subsequent to the Department's final results, four of the reviewed companies and a domestic producer, Zenith, filed lawsuits with the CIT challenging these results. Thereafter, on September 11, 1989, the CIT issued an order and opinion remanding the Department's determination so that the Department could, among other issues, make reasonable allowances for ''bona fide differences in warranty expenses between the United States and the home market.'' On January 31, 1991, the Department filed its first remand results

with the CIT (see *Zenith Electronics Corporation* v. *United States,* 770 F.Supp. 648 (CIT 1991)).

On January 17, 1995, the Department, consistent with the decision of the CAFC in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990), published a notice in the Federal Register stating that it would not order the liquidation of the subject merchandise entered or withdrawn from warehouse for consumption prior to a ''final and conclusive'' decision in this case. On June 20, 1996, the Department published amended final results of the first administrative review for those respondents not affected by the direct/indirect warranty issue (61 FR 31507).

On February 12, 1996, in *Zenith,* the CAFC upheld the Department's methodology for determining direct and indirect warranty expenses for purposes of making a COS adjustment in calculating AOC's final margin. The CAFC upheld the Department's practice of limiting adjustments to expenses that were reasonable identifiable, quantifiable, and directly related to the sales under consideration. It affirmed the Department's definition of ''direct'' as those expenses that vary with the quantity sold and ''indirect'' as those expenses that do not vary with the quantity sold. *Id.* (Citing *Koyo Seiko Co.* v. *United States,* 36 F.3d 1565, 1569 n.4 (Fed. Cir. 1994); *Torrington Co.* v. *United States,* 44 F.3d 1572, 1579 (Fed. Cir. 1995); *Consumer Prods. Div., SCM Corp.* v. *Silver Reed America, Inc.,* 753 F.2d 1033, 1035 (Fed. Cir. 1995)). In this instance, the CAFC concluded that evidence in the record failed to demonstrate that AOC's in-house warranty labor expenses varied with the quantity of CTVs sold. On July 18, 1996, the CIT remanded the case to the Department to recalculate AOC's dumping margin in accordance with the CAFC's February 12, 1996 opinion. The Department recalculated AOC's warranty expenses in response to the CIT's remand and in accordance with the CAFC's February 12, 1996 ruling, and filed the redetermination with the CIT on September 3, 1996.

As a result of the Department's recalculation of AOC's warranty expenses, designating in-house labor expenses incurred in the home market as indirect and the cost of parts as direct, the Department has determined the weighted-average dumping margin for CTVs from Taiwan, manufactured/exported by AOC, during the period October 19, 1983 through March 31, 1995, to be 0.17%. The CIT affirmed the Department's remand determination on September 19, 1996.

Accordingly, the Department will determine, and the Customs Service will assess, appropriate antidumping duties on entries of the subject merchandise made by AOC during the period October 19, 1983 through March 31, 1985. The Department will issue appraisement instructions directly to the Customs Service.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (f)) and 19 CFR § 353.28(c).

Dated: October 31, 1996.

Robert S. LaRussa,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96–28678 Filed 11–6–96; 8:45 am]

**BILLING CODE 3510–DS–M**

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**[A–588–054 and A–588–604]**

## Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative reviews and revocation in part of an antidumping finding.

**SUMMARY:** On May 5, 1995, the Department of Commerce (the Department) published the preliminary results of its 1992–93 administrative reviews of the antidumping finding on tapered roller bearing (TRBs), four inches or less in outside diameter, and components thereof, from Japan (A–588–054 finding) and the antidumping duty order on TRBs and parts thereof, finished and unfinished, from Japan (A–588–604 order). The review of the A–588–054 finding covers four manufacturers/exporters and ten resellers/exporters of the subject merchandise during the period October 1, 1992, through September 30, 1993. The review of the A–588–604 order covers five manufacturers/exporters of the subject merchandise, ten resellers/exporters of the subject merchandise, and 18 alleged forging producers for the period October 1, 1992, through September 30, 1993.

**EFFECTIVE DATE:** November 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** Valerie Turoscy or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5253.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 5, 1995, the Department published in the Federal Register the preliminary results (60 FR 22349) of the 1992–93 administrative reviews of the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan (41 FR 34974, August 18, 1976), and the antidumping duty order on TRBs and parts thereof, finished and unfinished, from Japan (52 FR 37352, October 6, 1987).

### Applicable Statute and Regulations

In accordance with section 751 of the Tariff Act of 1930, as amended (1988) (the Tariff Act), the Department has now completed these reviews for all firms except Koyo Seiko Company, Ltd. (Koyo). We will publish our preliminary and final results for Koyo at later dates. Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

### Scope of the Reviews

Imports covered by the A–588–054 finding are sales and entries of TRBs, four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classified under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30. Imports covered by the A–588–604 order include TRBs and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating TRBs, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the A–588–054 finding are not included within the scope of the A–588–604 order, except for those manufactured by NTN Corporation (NTN). This merchandise is currently classifiable under HTS item numbers 8482.99.30, 8483.20.40, 8482.20.20, 8483.20.80, 8482.91.00, 8484.30.80, 8483.90.20, 8483.90.30, and 8483.90.60. These HTS item numbers and those for the A–588–054 finding are provided for convenience and Customs purposes.

The written descriptions remain dispositive.

In addition, on February 2, 1995, we published in the Federal Register our final scope determination regarding Koyo's rough forgings (60 FR 6519). Because we determined that these forgings are within the scope of the A–588–604 order on TRBs from Japan, we have considered such forgings as within the scope of this 1992–93 review of the order.

These reviews cover TRBs manufactured and exported by NTN, NSK Ltd. (NSK), Nachi-Fujikoshi (Nachi), and Maekawa Bearing Mfg., Co., Ltd. (Maekawa), and TRBs resold/exported by Honda Motor Co., Ltd. (Honda), Fuji Heavy Industries, Ltd. (Fuji), Kawasaki Heavy Industries, Ltd. (Kawasaki), Yamaha Motor Co., Ltd. (Yamaha), Sumitomo Corporation (Sumitomo), Itochu Co., Ltd. (Itochu), Suzuki Motor Co., Ltd. (Suzuki), Nigata Converter Co., Ltd. (Nigata), Toyosha Co., Ltd. (Toyosha), and MC International (MC Int'l). These reviews also cover U.S. sales of forgings by NTN and 18 other firms originally identified as Japanese forging producers (Daido Steel Co., Ltd., Asakawa Screw Co., Ltd., Fuse Rashi Co., Ltd., Hamanaka Nut Mfg. Co., Ltd., Ichiyanagi Tekko, Isshi Nut Industries, Kawanda Tekko, Kinki Maruseo Nut Kogyo Kumiai, Kitazawa Valve Co., Ltd., Nittetsu Bolten, Shiga Bolt, Shinko Bolt, Sugiura Seisakusho, Sumikin, Seiatsu, Toyo Valve Co., Unytite Fasterner Mfg. Co., Ltd., Gotoh Nut Seisakusho, and Kawada Tekkosho). However, as explained in our preliminary results for these reviews, we have terminated our review for 14 of these 18 firms (see Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews, Termination in Part, and Intent to Revoke in Part, 60 FR 22350 (May 5, 1995) (*TRB 90/92 Prelim*)). The period of review (POR) is October 1, 1992 through September 30, 1993.

## Analysis of Comments Received

We gave interested parties an opportunity to comment on our preliminary results. At the request of the Timken Company (Timken), the petitioner in these proceedings, NTN, and NSK, we held a hearing covering both the reviews on August 4, 1995. We received case briefs from Timken, NTN, NSK, Fuji, and Kawasaki, and rebuttal briefs from Timken, NTN, NSK, and Honda.

At the request of the presiding official at the hearing, on August 11, 1995, Timken, NSK, and NTN submitted additional comments regarding specific issues. These comments and those contained in the case and rebuttal briefs are addressed below in the following order:

1. Model Match, Difference-in-Merchandise (Difmer) Adjustments, 20-Percent Test, and Set-Splitting
2. Cost Test Methodology
3. Packing and Movement Expenses
4. Adjustments to USP
5. Samples, Prototypes, and Sales Not in the Ordinary Course of Trade
6. Discounts, Rebates, and Price Adjustments
7. Miscellaneous Comments Regarding Level of Trade, VAT Methodology, Assessment and Cash Deposit Rates, Supplier's Knowledge, and Honda's Revocation
8. Cost of Production and Constructed Value
9. Clerical and Computer Programming Errors

### Comments Regarding Model Match, Difference-In-Merchandise Adjustments, 20-Percent Test, and Set-Splitting

*Comment 1:* NTN and NSK argue that due to decisions by the Court of International Trade (the CIT) in litigation related to earlier TRB reviews, the Department is required to include in its sum-of-the deviations model-match methodology a ten-percent ''cap'' on deviations in each of the five physical criteria used in this methodology, *citing,* as examples, *NTN Bearing Corp.* v. *United States,* 881 F. Supp. 595 *(CIT 1995) (NTN1*), and *Koyo Seiko Co.* v. *United States,* 834 F. Supp. 431, 434–35 (CIT 1993) (*Koyol*). NSK adds that the Department's failure to apply the ten-percent deviation cap invites comparisons between physically dissimilar TRBs because the Department's use of the 20 percent diffmer cap alone does not adequately screen out dissimilar matches.

Petitioner argues that, because the issue of the ten-percent deviation cap is currently on appeal at the United States Court of Appeals for the Federal Circuit (Federal Circuit), the Department should decline to alter its methdology until the final judicial decision is made on this issue.

*Department's Position:* We disagree with respondents. Since the issuance of our preliminary results, the Federal Circuit has definitively ruled that our choice not to apply the ten-percent deviation cap is reasonable and that we are not required to apply such a cap in connection with our sum-of-the-deviations model-match methodology (*see Koyo Seiko Co.* v. *United States,* No. 94–1363 (Fed. Cir. September 20, 1995)). As a result, we have not applied a ten-percent deviation cap on our five model-match criteria for these final results.

*Comment 2:* NTN argues that the Department incorrectly split home market TRB sets which are ''unsplittable.'' NTN claims that because certain of its TRB models contain cups and cones which are never sold individually in any market, it is illogical to split such models into individual cup and cone sales. Furthermore, NTN states that because the rationale behind the Department's set-splitting methodology is to find merchandise ''such or similar'' to individual cups and cones sold in the United States, the Department may only split TRB sets sold in the home market which contain cups and cones identical or similar to those cups and cones sold individually in the United States. NTN argues that, because cups and cones contained in its ''unsplittable'' sets are never sold individually, they do not represent merchandise which is potentially similar to individually sold cups and cones. Therefore, NTN asserts, the Department, by splitting such sets, creates a pool of home market cups and cones which cannot be fairly considered as candidates for matching to cups and cones sold separately in the United States.

Timken argues that, in accordance with section 771(16) of the Tariff Act, the Department's model-match methodology reasonably assesses objective physical criteria and the variable costs of production when identifying that home market merchandise which is such or similar to merchandise sold in the United States. Because the Department does not consider other factors such as packaging or invoicing, if the cup or cone split from an ''unsplittable'' set is physically identical, or most physically similar to a cup or cone individually sold in the United States, there is no statutory basis for the Department to reject such a comparison. Timken further states the NTN's argument, which basically asserts that a cup or cone sold within a set can never be found to be such or similar to a cup or cone that is sold separately, calls for an additional matching factor which is unwarranted by the statute. Finally, Timken argues that if the Department were not to split NTN's claimed ''unsplittable'' sets, the pool of home market such or similar merchandise would be narrowed and the Department's ability to match U.S. and home market merchandise would be curtailed.

*Department's Position:* We agree with Timken. Section 771(16) of the Tariff Act does not require that such or similar merchandise be sold in the same manner as merchandise under review. TRB components that are sold solely within sets do not lose their status as merchandise such or similar to individually-sold TRB components simply by virtue of the fact that they are sold as components of sets instead of an individual cups and cones. The fact that a home market cup or cone was never sold individually in any market does not preclude the possibility that the cup or cone may be the most physically similar merchandise to cups and cones NTN sold separately in the United States. Because they may be the most similar products, it is appropriate to include this merchandise in the pool of home market sales and, if such cups and cone are determined to be the most similar merchandise to products sold in the United States, it is appropriate to use them in our dumping comparisons, as we have done in past reviews of NTN and as has been approved by the CIT (see, *e.g., Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan,* 58 FR 64720 (December 9, 1992) (*TRBs 90/92*) and *NTN Bearing Corp.* v. *United States,* 747 F. Supp. 726, 741 (CIT 1990)).

*Comment 3:* NTN argues that the Department should not compare TRBs with different design types and, more specifically, that the Department should not compare TRBs of different precision ratings. NTN explains that not only is the physical nature of high precision TRBs much different than that for normal precision items, but high precision TRBs are sold at prices much higher than normal precision TRBs, and the two types of TRBs are never used interchangeably. Therefore, NTN asserts, the Department's comparison of normal precision TRBs to high precision TRBs is contrary to law. NTN also argues that, because the Department did not compare bearings with different precision ratings in the antifriction bearings (AFBs) investigation and subsequent reviews, and because the Department noted the use of bearing design type in its less-than-fair-value (LTFV) final determination in the A–588–604 TRB case, the Department should include design type and precision rating in its model-match methodology for these final results.

Timken contends that the Department's AFB model-match methodology, which reflects a ''family'' approach that includes design type and precision rating, does not serve as a basis for the use of design type and precision rating in the Department's TRB model-match methodology, because the AFB methodology was developed specifically for AFBs and neither NTN nor any other party has asserted that there are ''families'' of TRBs or identified characteristics of TRBs that would require a model-match methodology like that of AFBs. Timken also argues that NTN's reliance on the Department's LTFV determination in the A–588–604 case is incorrect in that the Department's referral to ''type of bearing'' in its determination did not encompass design types, but rather referred to the number of rows of rollers in a TRB, *citing Final Determination of Sales of Less than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan,* 52 FR 30700. Finally, Timken states that NTN has not provided evidence that the Department's TRB model-match methodology is contrary to law, and, absent such a demonstration, the Department is not required to alter its methodology.

*Department's Position:* We agree with Timken. As we explained in *TRBs 90/92,* design type categories are not consistent throughout the TRB industry. If we could not match across such categories, we would substantially limit the number of matches, thus working contrary to the statutory preference for price-to-price comparisons. If the physical nature of the compared bearings is significantly different, as NTN states is true for its high precision and low precision TRBs, the sum-of-the-deviations model-match methodology addresses the differences in physical criteria. In addition, if the bearings are not of equal commercial value, our 20 percent difmer cap precludes such a comparison (*see, e.g., TRBs 90/92* at 64721 and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan; Final Results of Administrative Review,* 57 FR 4960 (February 11, 1992) (*TRBs 89/90 (604)*)). Furthermore, concerning NTN's statement that high precision and low precision TRBs should not be compared because they are not interchangeable, ''interchangeability'' is not a requisite criterion for matching similar merchandise. If it were, it would effectively mandate that all comparison models be identical to ensure the ''interchangeability'' of the comparison merchandise. Finally, while all TRBs and AFBs are bearing products, because TRBs are different products than AFBs, it is reasonable for us to employ different model-match and other methodologies in our calculations for TRBs.

*Comment 4:* NSK argues that, in prior reviews, when determining the pool of potential similar home market merchandise, the Department has calculated its 20 percent difmer cap as 20 percent of the value of U.S. variable costs of manufacturing (VCOM). NSK states that in the preliminary results of these reviews the Department departed from its previous methodology and calculated its 20 percent difmer cap as 20 percent of the total cost of manufacture (TCOM) of the U.S. model. NSK concludes that, because the TCOM for a model is larger than the VCOM, the Department's new methodology resulted in an unreasonable and insupportable increase in the pool of similar home market merchandise. NSK further states that the Department's previous methodology was affirmed by the CIT in numerous cases, *citing NTN1.* NSK contends that because the Department has not adequately explained its reasons for using the new methodology, and given the CIT's approval of the Department's previous methodology, for these final results the Department should revert to its previous practice and use the VCOM as the denominator in its 20 percent difmer cap calculation.

Timken argues that the Department's use of the TCOM as the denominator in its calculation of the 20 percent difmer cap was not only explained, but, contrary to NSK's assertion, was given notice of in a 1992 Departmental ''Policy Bulletin.'' Timken adds that in the third AFBs review, the Department again explained its selection of TCOM as the reference point of the 20 percent difmer cap, *citing Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof, From France, Et. Al.; Final Results of Antidumping Administrative Reviews and Revocation in Part of an Antidumping Duty Order,* 58 FR 39729 (July 26, 1993) (*AFBs 91/92*).

*Department's Position*: In accordance with section 771 (16)(b)(iii) of the Tariff Act, in order to ensure that the home market merchandise being compared to the U.S. merchandise is commercially comparable, we automatically exclude from our pool of comparison home market merchandise those home market models for which the VCOM deviates by more than 20 percent from that of the U.S. model. In our preliminary results of review we calculated this deviation as the absolute value of the difference between the VCOMs for the home market and U.S. model divided by the TCOM for the U.S. model. In previous

TRB reviews we calculated this deviation as the absolute value of the difference between the VCOMs for the home market and U.S. model divided by the VCOM of the U.S. model. Our change in methodology for these preliminary results was based on a policy change announced in a 1992 Departmental policy bulletin which stated, ''because variable manufacturing costs change as a share of total manufacturing costs from product to product, the size of the 20 percent difference would vary as well in relation to both the price and total manufacturing costs. Therefore, a more stable basis for the denominator is the total manufacturing costs, and it has been chosen for uniform use'' (*see Import Administration Policy Bulletin*, No. 92.2, at 3 (July 29, 1992) (*Policy Bulletin*)). We also stated that this change would be implemented in all future and current reviews and investigations if the change could be made ''without delaying the cases beyond their due dates'' (*see Policy Bulletin* at 4). Upon review of the timing of this policy and the 1990–92 TRB reviews, the two TRB review periods for which we had initiated but not yet completed the reviews by the date of the policy bulletin, we determined that the implementation of this policy would serve to further delay those reviews. Because the implementation of this policy would not serve to delay these 1992–93 reviews, we adopted the policy in our preliminary results. In addition to this policy bulletin, our policy of using TCOM in the denominator when calculating our 20 percent difmer cap is apparent in the final results for several other cases published prior to the initiation of these 1992–93 reviews (*see, e.g., Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 43327, 43328 (August 16, 1993), *AFBs 91/92* at 39766, and *Paving Parts for Self-Propelled Bituminous Paving Equipment From Canada; Final Results of Administrative Review of the Antidumping Finding*, 58 FR 15481, 15482 (March 23, 1993) (*Paving Parts*)). It is clear that NSK had notice of the Department's policy change and that the implementation of this policy in the TRB reviews was imminent. Concerning NSK's contention that we have not adequately explained our reasons for using the new policy, we disagree. As demonstrated above, the *Policy Bulletin* clearly stated that TCOM represents a more stable denominator than VCOM. In *AFBs 91/92* we explained that TCOM is the more appropriate denominator because, unlike VCOM, it more accurately reflects the value of the model. In addition, it provides a more stable benchmark against which the absolute size of physical differences in merchandise can be compared in order to determine if the difference is so large that the two products being compared cannot be considered similar for model-matching purposes (*AFBs 91/92* at 39766). Furthermore, in *Paving Parts* we again explained that ''because the proportion of variable to fixed costs can vary significantly among products, the Department chooses to use TCOM, rather than VCOM, as the appropriate denominator, thus providing a reasonable, stable basis for evaluating comparability which is not affected by a particular product's proportion of fixed to variable costs'' (*Paving Parts* at 15482).

In light of the above, we have not changed our policy for these final results and have continued to use the TCOM of the U.S. model as the denominator in our calculation of the 20 percent difmer cap.

*Comment 5:* Timken argues that for those comparisons in which the sum of the deviations is zero the Department should set the difmer adjustment equal to zero such that no difmer adjustment would be made for comparisons between physically identical merchandise.

NTN argues that the five physical criteria used by the Department in its sum-of-the-deviations methodology are not the only physical criteria which TRBs have. Rather, NTN notes, these are simply the five which the Department relies upon for its model-match methodology. NTN claims that Timken is attempting to effectively eliminate the difmer adjustment and the Department should reject the petitioner's argument.

*Department's Position:* We disagree with Timken. To determine those home market TRBs which are identical to U.S. products, we compare TRBs on the basis of nomenclature. Because there are numerous criteria which define TRBs, the comparison of actual product coding is the only way we can ensure that two TRBs are physically identical. If we are unable to match the U.S. merchandise with identical home market merchandise by means of nomenclature we conclude that there is no physically identical home market match for that U.S. model. It is at this point in our model-match methodology that we employ the sum-of-the-deviations methodology. Therefore, it is only when an identical match can not be found that we use a comparison between models based on the sum of the deviations. Once we have found the one home market model whose sum of the deviations is the closest to that of the U.S. model, we consider this home market model to be the most similar home market merchandise. When we begin our search for the most similar model using our sum-of-the-deviations methodology, it is possible that the most similar home market model will not differ from the U.S. model in any of the five physical criteria used in our model-match methodology. However, simply because the sum of the deviations is zero, we do not assume the merchandise is identical. There are numerous characteristics which affect the variable costs incurred when producing that TRB. While we use a methodology based on the five most prominent characteristics of TRBs, we do not presume that all TRBs with the identical five physical criteria are identical bearings. We therefore agree with Timken that a difmer adjustment should not be made when comparing identical merchandise and, accordingly, we did not make such an adjustment in these reviews. However, because the sum-of-the-deviations methodology does not account for all possible difmers, it is proper to make other difmer adjustments when we compare the U.S. model to the most similar, but not identical, home market merchandise, even though it is at times possible that the sum of the deviations for the two will be zero.

Comments Regarding the Cost Test Methodology

*Comment 6:* NTN argues that the Department should not have performed set-splitting of home market set sales prior to conducting its cost-of-production (COP) test (cost test). NTN contends that, by splitting sets prior to the cost test, the Department derived fictional COP figures for its split cup and cone sales which it used to determine whether a split cup or cone sale was at, above, or below COP. NTN argues that there is no authority under the antidumping statute or regulations which allows for the derivation of fictional COP figures. NTN states that because the Department's current methodology results in the calculation of split cup and cone COP figures on the basis of the set the components were split from, the split cup and cone COP figures are not based on costs and expenses incurred in producing such or similar merchandise. As a result, NTN contends that the Department is in violation of its own regulations, *citing* 19 CFR 353.51(c). Finally, NTN claims that splitting sets prior to the cost test allows for the absurd possibility of a split cup or cone sale passing the cost test while the parent set does not.

Timken argues that, contrary to NTN's assertion that the Department derived fictional COP figures for NTN's split cup and cone sales, the Department derived these figures from actual costs submitted by NTN. In addition, the petitioner points out that a review of the split component COP figures derived by the Department indicates that these split cup and cone COP figures are virtually identical to the component COPs NTN reported for its sales of individually sold cups and cones identical to those split from home market sets. As such, Timken argues, the split component COPs derived by the Department are accurate, fair, and reasonable. Timken further asserts that, in accordance with section 771(16) of the Tariff Act, the Department correctly determine whether the split cup and cone sales represented such or similar merchandise on the basis of the physical characteristics and VCOM of the split cup and cones and not the parent set. Likewise, Timken comments, in accordance with section 773(a)(1) of the Tariff Act, the prices and price adjustments used by the Department to determined the foreign market value (FMV) of the split cups and cones were correctly based on the prices and price adjustments attributable to the split cups and cones, and not the parent sets. Therefore, Timken concludes, just as it would be absurd for the Department to base the prices, price adjustment amounts, and the determination of such and similar merchandise for the split component sales on the parent set, it would be just as absurd to determine under section 773(b) of the Tariff Act that the split cups and cones sales were below cost based on the costs of the parent set rather than on the costs of the split component sales. In light of the above, Timken argues that NTN's ''absurd'' result that a split cup and cone sale may pass the cost test while the parent set does not is not absurd, but the exact result mandated by the statute.

*Department's Position:* We agree with Timken. It is consistent with our set-splitting methodology and with the statute to first conduct the splitting of sets in the home market and then perform the cost test on all sales of cups and cones, whether they be individually sold cups and cones or split cup and cone sales. The split-component COP figures we derive from set splitting are based on NTN's reported cup and cone ratios for each home market set. These ratios reflect the variable cost of the cup to the cost of the set and the variable cost of the cone to the cost of the set, and are based on costs NTN actually incurred in producing individual cups and cones. Therefore, the resulting split cup and cone COP figures are not fictional. We have not created COP data where none existed, but, rather have apportioned actual costs incurred by NTN for a set to the cup and cone contained in that set. Furthermore, NTN has not explained why it is unreasonable for us to use these actual cost-based ratios in deriving the split cup and cone COP figures.

Because split cups and cones may be found to be the most similar merchandise to the product sold in the United States, we must ensure, in accordance with section 773(b) of the Tariff Act and 19 CFR 353.51, that the transaction price for the split cup and cone is above COP. By splitting sets prior to the cost test, we are able to separately test each home market sale, whether it was an individually sold or split sale, to determine if the sale was at, above, or below COP, rather than imputing the results of the cost test for the parent set to the split component sales. Finally, section 771(16) of the Tariff Act requires us to compare the price of the imported cups and cones with such or similar home market merchandise. Clearly, the home market merchandise which is such or similar to the imported cups and cones are home market cups and cones, whether they are regular or split sales, and not home market sets. It is, therefore, necessary to perform the cost test on the merchandise that is actually being compared to the U.S. merchandise (home market cups and cones), rather than the merchandise that is not being compared (home market sets) (*see TRBs 90/92* at 64729).

*Comment 7:* NTN argues that the Department has provided no explanation why a period of 3 months or more represents an ''extended period of time'' in its analysis of whether to disregard sales NTN made in the home market at prices below the COP. NTN contends that by definition, extended means ''covering a great period of time.'' NTN claims that this indicates that an extended period of time should account for at least 6 months (fifty percent) of the 12-month review period.

Petitioner argues that, as the CIT has noted, Congress did not provide for a specified time period in section 773(b) of the Tariff Act for determining whether sales below cost were made ''over an extended period of time,'' *citing Toho Titanium Co., Ltd.* v. *United States,* 657 F. Supp. 1280, 1285 (CIT 1987). According to Timken, it has therefore been left to the Department to determine whether sales below COP were made over an extended period of time. Timken states that the Department has correctly selected a period of three months as the time necessary to meet the goal of the statute and retain for comparison home market sales of obsolete or end-of-model-year merchandise.

*Department's Position:* The CIT, ruling on this identical argument by NTN in *NTN Bearing Corporation of America, American NTN Bearing Mfg. Corporation, and NTN Corporation* v. *United States,* Slip. Op. 94–96 (CIT 1994), clearly stated that the Department's definition of ''extended period of time'' was reasonable and in accordance with the law. Because NTN did not provide any evidence indicating that below-cost sales are a normal and expected characteristic of the TRB industry, and because our definition of ''extended period of time'' for these reviews is identical to that which we applied in previous TRB reviews and has been upheld by the CIT, we have not changed our definition for these final results.

Comments Concerning Packing and Movement Expenses

*Comment 8:* Timken argues that while section 772(D)(2)(A) of the Tariff Act authorizes the deduction of U.S. pre-sale inland freight expenses from United States price (USP), there is no corresponding provision authorizing a parallel adjustment to foreign market value (FMV). Timken states that this, long with the Federal Circuit's decision in *The Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* 13 F.3d 398 (Fed. Cir. 1994) (*Ad Hoc*), demonstrates that home market pre-sale inland freight charges should not be treated differently depending on the basis on which USP is determined and the Department should therefore not deduct pre-sale inland freight expenses in either purchase price or exporter's sales price (ESP) comparisons. Timken also argues that pre-sale movement expenses may not be deducted as indirect expenses in ESP comparisons because such expenses are not incurred in the selling of the merchandise, but rather before a sale occurred. Timken concludes that because the ESP offset is limited exclusively to selling expenses, pre-sale inalnd freight expenses cannot be adjsuted for under 19 CFR 353.56(b)(1) or (2) of the Department's regulations and, like pre-sale warehousing expenses, are best categorized as overhead or general and administrative expenses. Finally, the petitioner argues that, even if the Department adheres to its current methodology for adjusting FMV for pre-sale inland freight expenses, the Department should not

have made a deduction to FMV for NTN's home market pre-sale inland freight expenses in purchase price situations because NTN failed to demonstrate that its pre-sale inland freight expenses were direct selling expenses.

NTN argues that Timken's position completely ignores the CIT's decision in *Federal-Mogul* v. *United States*, 17 CIT, Slip Op. 94–40 (March 7, 1994) (*Federal-Mogul*), in which the CIT stated that, in *Ad Hoc* the Federal Circuit limited its decision to the calculation of FMV in purchase price situations only and specifically noted that it was not ruling on the Department's authority to adjust for pre-sale inland freight pursuant to the circumstance-of-sale (COS) provisions in section 773(a)(4)(b) of the Tariff Act (*Federal-Mogul* at 7). NTN argues that not only does *Federal-Mogul* authorize the Department's current practice of deducting pre-sale inland freight in ESP situations, but, given the Department's broad authority to make COS adjustments, the Department may also legitimately make such a deduction from FMV in purchase price situations as well.

NSK argues that if pre-sale inland freight expenses are deducted from USP, the plain language of the statute requires that the Department should deduct pre-sale inland freight expenses from FMV, regardless of whether it is a purchase price or ESP calculation.

NSK asserts that the Department has correctly defined the place of shipment in the country of exportation as ex-factory and, having done so, is bound by section 772(d)(2)(A) of the Tariff Act to deduct ''post factory'' freight expenses from FMV regardless of whether the Department designates the freight expense as pre-sale or post-sale. Like NTN, NSK also argues that the antidumping law grants the Department the authority to deduct both direct and indirect movement expenses from FMV as a COS adjustment.

NSK also argues that the Department should not have deducted pre-sale inland freight expenses in NSK's USP calculations. NSK contends that section 772(d)(2)(A) of the Tariff Act refers only to those costs or expenses incident to bringing merchandise from the place of shipment in the country of exportation to the place of delivery in the United States. NSK states that the record demonstrates that, after manufacture, but prior to sale, NSK sends TRBs to distribution centers. NSK explains that these TRBs are then shipped from the distribution center to the customers. NSK asserts that, because the freight it incurred in transporting the merchandise from the factory to the distribution center was incurred prior to the date of sale, and because the places of shipment in the country of exportation in NSK's case are its distribution centers, this pre-sale inland freight expense does not constitute an expense which was incurred incident to bringing the TRBs from the place of shipment to the place of delivery and should not be deducted from USP.

*Department's Position:* We agree with NSK that the *Ad Hoc* decision was limited to the narrow question of our inherent authority to deduct pre-sale freight expenses in purchase price situations. However, as noted by the CIT in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 865 F. Supp. 857 (CIT 1994), the *Ad Hoc Committee* decision ''discussed *without disapproval*, Commerce's ESP–COS procedures where, as indicated, indirect expenses, such as most pre-sale transportation costs, are deductible from FMV to the extent of the USP level of expenses.'' (emphasis added)

As explained in numerous other Departmental decisions, we have determined, in light of *Ad Hoc* and its progeny, that the Department no longer can deduct home market movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. We instead adjust for those expenses under the COS provision of 19 CFR 353.56 and the ESP offset provision of 19 CFR 353.56(b) (1) and (2), as appropriate, in the manner described below *(see, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et. al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocations in Part of Antidumping Duty Orders*, 60 FR 10900 (February 28, 1995) *(AFBs 92/93)*, *Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review*, 60 FR 2378 January 9, 1995), *Final Determination of Sales at Less Than Fair Value; Canned Pineapple From Thailand*, 60 FR 29553 (June 5, 1995)).

When USP is based on either ESP or purchase price, we adjust FMV for home market movement charges through the COS provision of 19 CFR 353.56(a). Under this adjustment, we capture only direct selling expenses, which include post-sale movement expenses and, in some circumstances, pre-sale movement expenses. Specifically, we treat pre-sale movement expenses as direct expenses if those expenses are directly related to the home market sales of the merchandise under consideration.

In order to determine whether pre-sale movement expenses are direct, the Department examines the respondent's pre-sale warehousing expenses, since the pre-sale movement charges incurred in positioning the merchandise at the warehouse are, for analytical purposes, linked to pre-sale warehousing expenses (*see Final Results of Redetermination Pursuant to Court Remand*, dated January 5, 1995 (pertaining to Slip. Op. 94–151)). If the pre-sale warehousing constitutes an indirect expense, the expense involved in getting the merchandise to the warehouse, in the absence of contrary evidence, also must be indirect; conversely, a direct pre-sale warehousing expense necessarily implies a direct pre-sale movement expense. We note that although pre-sale warehousing expenses in most cases have been found to be indirect expenses, these expenses may be deducted from FMV as a COS adjustment in a particular case if the respondent is able to demonstrate that the expenses are directly related to the sales under consideration (*see Ad Hoc Committee of AZ–NM–TX–FL producers of Gray Portland Cement* v. *United States*, Slip Op. 95–91 (CIT May 15, 1995) (upholding the Department's pre-sale inland freight methodology set forth in its January 5, 1995, Remand Results)).

Additionally, when USP is based on ESP, under the ESP offset provision set forth in 19 CFR 353.56(b) (1) and (2), we adjust for any pre-sale movement expenses found to be indirect selling expenses.

We disagree with Timken that we deducted pre-sale inland freight expenses from FMV in our purchase price comparisons for NTN. In our preliminary results for NTN we determined that NTN's reported inland freight expenses were not directly related to its sales. As a result, in our preliminary results computer program for NTN we included pre-sale inland freight in our home market indirect expenses variable. However, we used this variable in our ESP calculations only for ESP offset purposes, in accordance with our policy to adjust FMV for pre-sale inland freight expenses which are indirect in nature, pursuant to the ESP offset provision set forth in 19 CFR 353.56(b) (1) and (2). We did not apply this home market indirect selling expenses variable in our purchase price calculations. Therefore, contrary to Timken's claim, in our preliminary results for NTN we did not deduct pre-sale inland freight from FMV in purchase price comparisons, and, as a result, we have not changed our calculations in these final results for NTN.

We also disagree with Timken's argument that pre-sale movement expenses should not be viewed as selling expenses. The only purpose of moving merchandise from the factory to a warehouse or distribution center is in furtherance of the process of selling that merchandise and no other characterization is sensible.

Concerning NSK's claim that we should not have deducted pre-sale inland freight from USP because its reported pre-sale inland freight expenses do not fall within the meaning section 772(d)(2)(A) of the Tariff Act, we disagree. The crux of NSK's argument is that because it reports the date the home market merchandise was shipped from the distribution center as its home market date of shipment, then, in terms of its U.S. sales, the distribution center must be the point of shipment from the country of exportation in accordance with section 772(d)(2)(A) of the Tariff Act. We have reviewed NSK's responses to our original and supplemental questionnaires and have determined that NSK has provided no evidence which demonstrates that its home market distribution centers constitute the ''point of shipment in the country of exportation.'' To the contrary, the evidence on the record suggests that, for that merchandise which is destined for export, NSK's home market distribution centers are intermediary points of shipment and not the original point of shipment in Japan, the country of exportation. For example, TRBs destined for exportation are first transported from the plant to distribution centers, and subsequently shipped to NSK's freight forwarder. From the freight forwarder the merchandise is then shipped to the port of exportation. The initial packing of all merchandise is done at the plant, and that merchandise destines for exportation receives additional packing for export by the freight forwarder. NSK provided no explanation of what type of processing takes place (such as what type of paperwork is generated or what type of activities occur) at the distribution centers with regard to export merchandise. Nor did NSK provide information on the record concerning any expenses it might have incurred at the distribution centers for TRBs destined for export. In other words, we have no information upon which to make a determination that these distribution centers should be considered as the shipment point in the country of exportation pursuant to section 772(d)(2)(A) of the Tariff Act. Rather, this record evidence leads us to conclude that NSK's home market distribution centers are merely one stopping point in the transit of merchandise destined for export, which begins at the factory door and ends with the port of exportation. Therefore, we have not changed our treatment of this expense and have deducted from USP NSK's reported pre-sale inland freight expenses for U.S. merchandise, including those expenses incurred for the transport of the merchandise from the factory door to the distribution centers.

*Comment 9:* Timken points out that NTN reported distinct pre-sale inland freight expenses for its U.S. and home market sales. Timken argues that, given the fact that NTN's pre-sale inland freight expenses represent the costs incurred when moving merchandise from the factory to the warehouse or distribution center, the allocation ratios NTN calculated for these expenses should be consistent, whereas NTN's vary. Timken contends that the Department should either make identical deductions from USP and FMV for pre-sale inland freight, or eliminate the adjustment entirely.

Citing previous Departmental decisions on this issue in both the TRB and AFB cases, NTN argues that the Department has acknowledged in the past that pre-sale freight expenses do not have to be the same in both markets and urges the Department to again reject Timken's position.

*Department's Position:* We agree with NTN. Because sales in each market may be handled differently and, thus, different freight expenses may be incurred, variations in these expenses between markets is reasonable and such variations are not an adequate basis upon which to reject NTN's claimed adjustment for home market and U.S. pre-sale inland freight expenses. Likewise, the deduction of pre-sale inland freight from either the home market or the U.S. market is not contingent on whether pre-sale inland freight occurred in the other market (*see TRBs 90/92* at 64723 and *AFBs 91/92* at 39768).

*Comment 10:* The petitioner argues that NSK's reported U.S. repacking material and labor expense factors, which NSK allocated on the basis of the total POR sales value of all products sold in the United States, is incorrect. Timken contends that, while NSK packs both domestically produced and imported TRBs in the United States, its allocation methodology does not accurately account for the repacking costs attributable to imported merchandise only. A a result, Timken argues that the Department should recalculate NSK's repacking expense factor by dividing NSK's reported repacking expenses during the POR by the reported sales value of only that subject merchandise which was imported during the POR.

NSK contents that, while it normally shipped merchandise from its U.S. warehouses in its original containers, it occasionally repacked merchandise to accommodate small orders. NSK added that because it ships both imported merchandise and domestically-produced merchandise from its U.S. warehouses, the repacked merchandise may have been imported or may have been domestically produced. NSK argues that, because it does not maintain records in the ordinary course of business concerning this distinction, it cannot calculate the exact repacking expenses attributable to its imported merchandise only and its calculation of its repacking expenses is therefore reasonable.

*Department's Position:* We agree with NSK. NSK explained in its response that it incurs repacking material and labor expenses for both imported and domestically-produced merchandise and does not maintain records which allow it to make a distinction between the repacking expenses incurred for its imported merchandise separate from those for its domestically-produced merchandise. As a result, NSK's inclusion in its numerator of all the repacking expenses it incurred during the POR for all products sold in the United States is acceptable, given its ordinary business practices. Because its numerator reflected the repacking expenses incurred on all products sold in the United States during the POR, NSK correctly used the total sales value of all products it sold in the United States as its denominator. In addition, because the fact that a particular product was imported or domestically produced did not affect the amount of materials NSK used or the labor required to repack that product, and because NSK's allocation methodology reflects the manner in which it incurred and booked its repacking expenses, we are satisfied that its reported repacking expenses are accurate and reasonable.

Comments Concerning Various Adjustments to USP

*Comment 11:* Timken argues that, because NTN has failed to demonstrate that its allocation of U.S. selling expenses by level of trade was reasonable and accurate, the Department should re-allocate NTN's reported U.S. selling expenses without regard to levels of trade. In addition, Timken asserts that when re-allocating certain of NTN's reported U.S. selling expenses in its

preliminary results, the Department used an incorrect allocation base such that the Department's calculated expense factors failed to yield the net expense figures NTN reported in its response.

NTN argues that its allocation of U.S. expenses by level of trade is directly based on its accounting and sales records. NTN also points out that the Department has consistently accepted all aspects of its U.S. selling expense allocation methodology in previous segments of these proceedings, and insofar as its methodology is not unreasonable, the Department should accept it in these final results as well.

*Department's Position:* In our preliminary results for NTN we slightly modified NTN's U.S. selling expense allocations such that certain expenses incurred by NTN Bearing Company of America (NBCA) in selling to U.S. customers were more appropriately expressed as a percentage of U.S. sales value rather than the transfer price between NTN and NBCA. However, in doing so we accepted NTN's level-of-trade methodology because we have determined that this methodology prevents, rather then creates, certain distortions. As demonstrated in NTN's response, NTN developed its level-of-trade allocations, which it based on regional sales and the regional average number of employees, to compensate for the fact that in certain regions NTN sells to only one level of trade. To avoid the distortions that would arise if expenses incurred in a region were allocated to a level of trade that does not exist in that region, NTN developed a complex allocation methodology which operates to attribute expenses incurred on sales to a particular level of trade only to that level of trade. NTN achieved this level of detail because it maintains its books and accounting records according to levels of trade. In this way, we are satisfied that NTN's detailed and often complex U.S. expense reporting methodologies result in reasonable allocations. Therefore, absent specific evidence demonstrating that NTN's level-of-trade allocations are unreasonable, we do not agree with Timken that we should disregard these allocations. However, for these final results, we have re-allocated NTN's U.S. selling expenses without regard to different levels of trade for a different reason, as discussed below.

To support its position that the Department's re-allocations of certain of NTN's reported U.S. expenses in the preliminary results failed to properly account for the gross expense amounts NTN reported in its response, the petitioner provided a detailed computer analysis demonstrating the discrepancy. In reviewing Timken's computer analysis, we discovered a significant error in NTN's response. In its supplemental questionnaire response dated May 31, 1994, NTN submitted a revised total U.S. in-scope sales value and stated that it discovered an error in its earlier reported figure. We compared this new figure to the total sales value we derived from NTN's submitted U.S. sales data computer files and verified its accuracy. However, our further review of NTN's response revealed that, in its U.S. selling expense allocations detailed in proprietary exhibit B–8 of its initial response, NTN did not use the same total sales value, but rather a figure much different from the revised figure submitted in its supplemental response, and even significantly different from its originally-reported ''incorrect'' figure (submitted in proprietary exhibit A–19 of its original response). We have examined NTN's responses in detail and are unable to find any explanation for this discrepancy. Because (1) NTN clearly reported that the sales figure submitted in its supplemental response was the ''corrected'' figure, (2) NTN reported this figure subsequent to its submission of proprietary exhibit B–8, and (3) the revised figure matches that which we derived from NTN's home market sales computer data files, we have determined that the figure contained in NTN's supplemental response is the correct U.S. total sales value for scope merchandise during the POR and that NTN's U.S. selling expense allocations should be revised to employ this total amount. However, the complex nature of NTN's U.S. selling expense reporting methodologies, which incorporate layers of allocations, makes it impossible for us to simply duplicate NTN's methodology and preserve any level-of-trade distinctions. We have therefore reallocated NTN's U.S. selling expenses using a simple method: we divided the expense amounts attributable to scope sales by the ''corrected'' total U.S. sales value for scope merchandise. We did this in our reallocations for NTN's U.S. inland freight from-warehouse-to-customer expenses, direct technical service expenses, indirect advertising expenses, other indirect selling expenses, U.S. repacking material expenses, and U.S. repacking labor expenses, all of which represent expenses incurred by NBCA on its sales to U.S. customers and are properly allocated on the basis of total U.S. sale value.

In sum, while we have completely re-allocated certain of NTN's U.S. expenses without regard to different levels of trade, our determination to do so in these final results was based solely on our discovery of a discrepancy in NTN's reported total U.S. sales value for scope merchandise during the POR.

*Comment 12:* Timken argues that it is apparent that respondents have adopted a strategy of absorbing antidumping duties, rather than correcting their price discrimination. Timken maintains that when a related U.S. importer absorbs antidumping duties as a cost of doing business, the duties themselves constitute a selling expense because the duty represents an additional cost, charge, expense, or import duty within the meaning of section 771(d)(2)(A) of the Tariff Act. Therefore, the petitioner contends that the Department must reduce USP by an amount equal to the antidumping duties absorbed. Timken further argues that if the Department refuses to treat antidumping duties as a cost of selling merchandise, then it should at least apply 19 CFR 353.41(a), which addresses situations in which a foreign producer reimburses its U.S. affiliates for antidumping duties paid. Timken contends that, contrary to the Department's position on this issue expressed in other cases, the regulation was always intended to apply to both ESP and purchase price situations. Timken states that because the objective of an ESP calculation is to arrive at an appropriate estimation of arm's-length ex-factory prices from the foreign producer to the related U.S. buyer, it is not possible to estimate the true f.o.b. price if the exporter is allowed to reimburse a related importer for antidumping duties. Timken also maintains that because it is conceptually incorrect to treat related exporters and importers as single entities for the purpose of identifying and deducting selling expenses incurred by the importing entity, it is likewise incorrect to treat the companies as a single entity for the purpose of determining whether duties have been reimbursed. Finally, Timken argues that *Outokumpu Copper Rolled Products AB* v. *United States*, 829 F. Supp. 1371 (CIT 1993) (*Outokumpu*), the case the Department has previously used to support its position on this issue, is irrelevant because these TRB reviews address exporters who, Timken asserts, reimburse the entities who actually pay duties to Customs, that is, the related U.S. importers.

NSK argues that antidumping duties do not constitute additional expenses included in USP but only exist as a result of the difference between USP and FMV, *citing Borusan Holding A.S.* v. *United States*, 16 CIT 278 (CIT 1992). NSK contends that to deduct

antidumping duties from USP would double-count them and, as such, would constitute a violation of the antidumping duty law (*Holmes Prod. Corp.* v. *United States*, 795 F. Supp 1205 (CIT 1992)). NSK next argues that the Department and the CIT have consistently held that 19 CFR 353.26 (1992) does not authorize the deduction of reimbursed antidumping duties from USP, *citing Brass Sheet and Strip From Sweden; Final Results of Antidumping Duty Administrative Reviews,* 57 FR 2706 (January 23, 1992) (*Swedish Brass*). NSK states that the regulation clearly calls for the deduction of antidumping duties that have been paid on behalf of the importer and that, because antidumping duties are only paid upon liquidation, the Department cannot logically adjust USP for an event that has not yet taken place. NSK also points out that 19 CFR 353.26(b) specifically requires an importer to file a certificate with Customs attesting to the fact that it has not entered into an agreement for the payment or refund of all or part of the antidumping duties due. NSK states that once an importer has indicated on this certificate that it has not been reimbursed for antidumping duties, the Department is not required to expend additional resources on the issue, *citing Outokumpu* at 1384.

NTN points out that the CIT and the Department have both rejected Timken's position concerning the reduction of USP for so-called absorbed antidumping duties and that there is no reason to depart from this practice in these present reviews. NTN also argues that the Department acted correctly by not adjusting USP for the alleged reimbursement of antidumping duties under 19 CFR 353.26 for several reasons. First, NTN claims that because this regulation does not implement a provision of the law and lacks a statutory nexus, it constitutes an impermissible interpretation and the Department lacks the authority to implement it. Second, NTN asserts that the regulation requires an adjustment only where there has been a reimbursement by the producer and Timken has provided no such evidence. Finally, NTN maintains that, as upheld in *Outokumpu,* the regulation permits the adjustment to USP only where the producer paid duties on behalf of the importer. NTN argues that because NBCA, for whose account the merchandise was imported, is a wholly-owned subsidiary of NTN Japan, NBCA is actually the exporter, not the importer.

*Department's Position:* We disagree with Timken. First, concerning Timken's position that we should deduct ''absorbed'' antidumping duties from USP, Timken has provided no evidence demonstrating that the U.S. affiliates of the manufacturers/exporters subject to these reviews have absorbed the antidumping duties as a cost of selling in the United States. In addition, we agree with NSK that to make this additional deduction for antidumping duties assessed on imports of subject merchandise would result in double-counting (*see AFBs 92/93* at 10907). Finally, as stated in *AFBs 92/93* at 10907, we do not agree that antidumping duties constitute a selling expense and should be deducted from ESP. This position was upheld by the CIT in *Federal-Mogul* v. *United States,* 813 F. Supp 856 (CIT 1993).

Concerning Timken's position that we should apply 19 CFR 353.26 of our regulations, we again disagree. We have consistently held that, absent evidence of reimbursement, we do not have the authority to make such an adjustment to USP (*see Swedish Brass* at 2708 and *Brass Sheet and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 54 FR 33257 (1989). Furthermore, in *Torrington Co. and Federal-Mogul Corp.* v. *United States,* 881 F. Supp. 622 (CIT 1995), the CIT clearly explained that in order for 19 CFR 353.26 to apply, it must be shown that the foreign manufacturer either paid the antidumping duty on behalf of the U.S. importer or reimbursed the U.S. importer and that the regulation does not impose upon the Department an obligation to investigate based on mere allegations. The CIT went on further to state that, before the Department is required to commit resources to investigate the transfer of funds between related corporations, the party who requests the investigation must produce some link between the transfer of funds and the reimbursement of antidumping duties. In addition, the CIT pointed out that once an importer has indicated on its certificate at the time of liquidation that it has not been reimbursed for antidumping duties, it is unnecessary for the Department to conduct additional inquiry absent a sufficient allegation of customs fraud. In the present reviews Timken has provided no evidence demonstrating a link between intracorporate transfers and the reimbursement of antidumping duties. Absent this evidence, we have not conducted an investigation concerning this issue and we have not made an adjustment to USP in accordance with 19 CFR 353.26.

*Comment 13:* The petitioner questions NTN's reported U.S. credit expenses, stating that the amounts NTN reported are unrealistic. Timken argues that the Department, therefore, should use as best information available (BIA) for NTN's reported U.S. credit expenses the highest credit expense amount reported for any transaction or a proxy amount from another respondent.

NTN argues that because Timken's argument is based on speculation and that Timken has offered no proof to support its assertions, there is no basis for the use of BIA.

*Department's Position:* NTN explained in its response that it derived a customer-specified U.S. credit expense ratio based on information from its accounts receivables ledgers concerning the average number of days payment was outstanding for each of its customers throughout the review period (*see* proprietary attachment 4 to NTN's March 31, 1994, supplemental response). As such, NTN's reported credit expense amounts are based on customer's actual payment information as maintained in NTN's books and records. We have verified this method in previous reviews, and, because NTN has not changed its methodology for these reviews, we are satisfied that NTN has again reported U.S. credit expense amounts which are derived directly from actual customer payment information. In its brief, Timken, by comparing the U.S. credit expenses to home market credit expenses, concludes that NTN's U.S. credit expenses are unrealistic. We disagree. In light of the fact that NTN's credit expenses are based on actual customer payment information and the fact that the home market and U.S. markets constitute two distinct markets with different customer payment histories, we are not persuaded that NTN's credit expenses are unrealistic and we have not altered our treatment of these claimed expenses for these final results.

*Comment 14:* The petitioner contends that NTN exclude certain commissions it paid on specific purchase price sales from its reported indirect selling expenses and did not otherwise report them as adjustments to USP. Timken argues that the Department should either adjust USP for NTN's purchase price commissions, or, in the alternative, include them in NTN's total U.S. indirect selling expense adjustment.

NRN argues that the Department has addressed this issue several times before and there is not reason for the Department to change its position in these current TRB reviews.

*Department's Position:* NTN explained in its response that, as a means of compensating NBCA for expenses it incurred with respect to

services it provided for certain of NTN's purchase price sales, NTN made ''commission' payments to NBCA. Because these payments were not related to ESP sales, NTN excluded them from its reported U.S. indirect selling expenses for its ESP sales. As stated by the CIT in *Outokumpu Copper Rolled Products AB and Outokumpu Copper (USA) Inc.* v. *United States,* 850 F. Supp. 16 (March 16, 1994), the Department generally does not make an adjustment for commissions to related parties because such commissions are considered intra-company transfers of funds and, as such, do not qualify for COS adjustments. In order to determine whether an adjustment for related-party commissions is appropriate, we apply a two-pronged test. First, we determine if the commissions are directly related to specific sales and then whether the commission is at arm's length (*see LMI-La Metalli Industriale, S.p.A United States,* 912 F.2d 455, 458–459 (Fed. Cir. 1990) and *Certain Welded Carbon Steel Standard Pipes and Tubes from India,* 57 FR 54360 (November 18, 1992)). To determine whether a related-party commission is at arm's length, where possible, we compare the related-party ''commissions'' to commissions paid to unrelated parties in the same market (*see Coated Groundwood Paper from the United Kingdom,* 56 FR 56403 (November 4, 1991)).

Because in the case of ESP sales NBCA paid commissions to unrelated sales representatives in the U.S. market, we have a benchmark to which we can compare NTN's related-party ''commission.'' NTN reported in its response the range of commission rates granted to its unrelated sales representatives. The only data we have about the related-party ''commission'' is the POR payment amount NTN reported as an adjustment to its ESP indirect selling expenses. Therefore, to determine a percentage rate for the NBCA ''commission,'' we divided this amount by the total sales value of those purchase price sales for which NBCA provided services. Our analysis revealed that NTN's percentage payment to NBCA was not at arm's length when compared to the commissions NBCA paid to unrelated U.S. commissionaires. As a result, we have treated this payment to NBCA as an indirect selling expense for NTN's purchase price sales and have deducted this payment amount from NTN's reported U.S. indirect selling expenses for its ESP sales.

*Comment 15:* Timken argues that the Department should not accept NTN's claimed downward adjustment to its reported U.S. indirect selling expenses for interest on cash deposits. Timken points out that the Department clearly rejected such a claim in its last AFB final results and should do so here as well, *citing AFBs 92/93* at 109182.

NTN argues that, just as antidumping duties are not the basis of an adjustment to ESP, so too the costs that are related to them should not be an adjustment to ESP. Therefore, the expenses should be treated as a deduction from its U.S. indirect selling expenses.

*Department's Position:* We disagree with NTN. Cash deposits of estimated antidumping duties are provisional in nature because they may be refunded, with interest, at some future date. Because the cash deposits are provisional in nature, so too are any interest expenses that respondents may incur in borrowing to finance cash deposits. To the extent that respondents receive refunds of cash deposits with interest, that interest will offset the interest expenses that respondents may have incurred in financing the cash deposits. Therefore, we have not allowed NTN's claimed offsets to its reported interest expenses in the United States to account for that portion of the interest expenses that NTN estimated to be related to payment of cash deposits of estimated antidumping duties.

*Comment 16:* The petitioner contends that the two additional export selling expenses NTN reported in its supplemental response, foreign exchange charges and commissions on export sales, were incorrectly allocated on the basis of the ratio of salaries in NTN's export sales department. Timken argues that these expenses, unlike NTN's other reported export selling expenses, are not general overhead expenses but expenses related to specific sales and, as such, should be allocated based on sales value.

NTN contends that its allocation of these expenses on the basis of the salaries of its export sales department is reasonable and should be accepted by the Department. NTN argues that because the export selling expenses it incurred bear no relationship to the size or identity of the export sales, its allocation is actually more accurate than one based on sales values.

*Department's Position:* We disagree with Timken. We have found NTN's export selling expense allocation methodology based on the salaries of its export department personnel a reasonable measure of its export selling expenses attributable to U.S. sales. Timken has provided no evidence demonstrating why the application of this methodology to these two expenses is distortive or why its suggested methodology would yield more accurate results. We therefore have no reason to suspect that an allocation methodology which is reasonable for the export selling expenses NTN originally reported in its response is unreasonable for the two additional expenses it reported in its supplemental questionnaire response. As a result, for these expenses we have accepted NTN's allocation methodology for these final results.

Samples, Prototypes, and Sales Not in the Ordinary Course of Trade

*Comment 17:* NTN contends that the Department improperly determined its reported home market sample and small-quantity sales to be within the ordinary course of trade and included such sales in its margin calculations. NTN argues that its home market sample sales cannot be considered as in the ordinary course of trade because they are items which enable a customer to make a buying decision. NTN also maintains that its reported home market small-quantity sales cannot be considered ordinary, given the extremely small quantities involved.

The petitioner argues that the Department incorrectly excluded from its analysis certain of NSK's U.S. and home market sales which the Department determined were outside the ordinary course of trade. Timken contends that because NSK failed to demonstrate that its reported home market sample and prototype sales were outside the ordinary course to trade in accordance with the standards set out by the CIT in *Murata Mfg. Co., Ltd.* v. *United States,* 820 F. Supp. 603, 606 (CIT 1993) (*Murata*), the Department must alter its determination for these final results and include such sales within NSK's home market data bases. Likewise, Timken argues that the Department should not have excluded NSK's reported U.S. zero-priced sample sales from its analysis. Timken states that not only is there no statutory basis for excluding any sales from the U.S. data base, but section 751(a)(2)(A) of the Tariff Act specifically requires that the Department calculate the amount of duty payable ''on each entry of merchandise'' into the United States.

NSK argues that the Department correctly treated its reported home market sample and prototype sales and U.S. zero-priced sample sales as sales outside the ordinary course of trade. NSK points out that the Department completely verified its classification of its home market sample and prototype sales as outside the ordinary course of trade and examined various documentation demonstrating the abnormal nature of these sales. In

addition, NSK argues that the zero-priced sample sales given to U.S. customers constitute promotional expenses and not ''sales.'' NSK states that, as such, the expense of these zero-priced sales is considered in accord with NSK's normal accounting practices as an indirect selling expense, and, to avoid double-counting, the Department must exclude these samples from the U.S. database. NSK further argues that merchandise delivered free of charge clearly does not constitute merchandise ''sold,'' and, finally, citing *Ipsco Inc.* v. *United States*, 714 F. Supp. 1211, 1217 (CIT 1989), NSK claims that the Department may exclude from its U.S. sales data base those sales which are not representative of the seller's behavior and sales which are so small that they have an insignificant effect on the margin.

*Department's Position:* In the case of NSK's claim that its zero-priced U.S. sales should be considered as outside the ordinary course of trade and excluded from NSK's U.S. data base, other than for sampling, there is no statutory nor regulatory basis for excluding any U.S. sales from an administrative review. Section 751(a)(2)(A) of the Tariff Act requires that we analyze all U.S. sales within the review period (*see, e.g., AFBs 92/93 at* 10948 and *Final Results of Antidumping Administrative Review; Color Television Receivers From the Republic of Korea*, 56 FR 12701, 12709 (March 27, 1991)). We disagree with NSK that *Ipsco* is applicable here because that case concerned a LTFV investigation in which we have the discretion to eliminate from our analysis unusual U.S. sales. The present proceeding is an administrative review and section 751(a)(2)(A) of the Tariff Act requires us to establish a dumping margin for ''each U.S. entry.'' In addition, in this review we have not used ''averages or generally recognized sampling techniques'' which, pursuant to section 777A of the Tariff Act, could also justify the exclusion of certain U.S. sales from our analysis. However, we do agree with NSK that to include its zero-priced sample sales in our U.S. data base and allow the inclusion of an expense in NSK's indirect selling expenses which reflects the cost of these sample sales would effectively be double-counting. Therefore, for these final results we have included NSK's zero-priced U.S. sample sales in our analysis, and, to avoid double-counting, we have deducted the cost of these samples from NSK's reported U.S. indirect selling expenses (*see AFBs 92/93* at 10948).

In contrast to the above, there is a clear statutory and regulatory basis for the exclusion from our analysis of those home market sales we determine to be outside the ordinary course of trade. Section 773(a)(1)(A) of the Tariff Act states that the Department is required to compare the price of the merchandise imported into the United States to the price of the merchandise sold or offered for sale ''in the principal markets of the country from which exported in the usual commercial quantities and in the ordinary course of trade for home market comparison.'' As defined in section 771(15) of the Tariff Act, ordinary course of trade means the ''conditions and practices which, for a reasonable time prior to exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind.''

Generally, when determining whether home market sales are within the ordinary course of trade, the Department applies the standards set forth in *Murata, Nachi-Fujikoshi Corp.* v. *United States*, 708 F. Supp. 716, 718 (1992) (*Nachi*), and *Mantex, Inc., Et. Al.*, v. *United States*, 841 F. Supp. 1290, 1305–1309 (CIT 1993) (*Mantex*). In *Murta* the CIT quoted with approval the Department's statement in *Certain Welded Steel Standard Pipes and Tubes from India; Final Results of Antidumping Duty Administrative Reviews*, 56 FR 64753 (1991), that the Department, in determining whether home market sales are in the ordinary course of trade, does not rely on one factor considered in isolation, but rather considers all circumstances of the sales in question. In addition, the CIT noted that in other cases the Department determined that sales were outside the ordinary course of trade based not only on the presence of small quantities or high prices, but also because the Department found other factors that supported the outside-the-ordinary-course-of-trade categorization (*see Murata* at 9). In *Nachi* the CIT held that the Department must make determinations regarding sample sales by examining the relevant facts of each individual case and that the burden of proof in demonstrating that such sales are outside the ordinary course of trade lies with the respondent. In *Mantex* the CIT restated its previous opinion in *Nachi*.

In its response NTN described its sample sales as sales of items to a customer which are used by the customer to determine whether or not to buy the product. NTN explained that, through statements and other representations the customer makes, NTN determines the ''sample'' nature of the sale and codes the sale accordingly. Concerning its small-quantity sales reported as not in the ordinary course of trade, NTN explained that for each transaction where the total quantity was three units or less, and the total number of transactions during the POR was seven or less, NTN searched back to fiscal year 90 and, if certain conditions were met, it considered the sale as outside the ordinary course of trade. The only other information on the record regarding these sales are NTN's computer data files in which it reported such sales separately from the rest of its home market data base.

In accordance with *Murata*, we attempted to examine all factors surrounding NTN's reported sample and small-quantity sales to determine if they were outside the ordinary course of trade. However, NTN provided us with little information other than a general description of these sales upon which to base such a determination. We have no other narrative explanation, supporting documentation, or other evidence to demonstrate why these sales are not representative of NTN's normal practices in selling TRBs in Japan, or otherwise demonstrates the ''aberrational'' nature of these sales. For example, we have no evidence supporting the notion that NTN's sample sales were sold only for the purpose of allowing the customer to make a decision to buy. Likewise, we have no evidence supporting NTN's categorization of its ''small-quantity'' sales as abnormal, other than the fact that they were small-quantity sales. In accordance with *Nachi*, the burden of proving that its sales are outside the ordinary course of trade lies clearly with the respondent, and in this instance NTN has failed to meet that burden.

Furthermore, this is not the first review or the first case in which we have rejected NTN's categorization of certain of its sales as not in the ordinary course of trade. In our last TRB reviews we clearly explained that we applied the *Murata* and *Nachi* standards to our determination of whether NTN's alleged outside-the-ordinary-course-of-trade sales were indeed outside the ordinary course of trade (*see TRBs 90–92* at 64732). In these reviews we determined that NTN did not supply sufficient evidence to allow us to find these sales as outside the ordinary course of trade. NTN has had clear notice prior to these current reviews that its method of responding to our questionnaire failed to demonstrate the ''not-in-the-ordinary-course-of-trade'' status of its sample and small-quantity sales. However, NTN took no steps to improve its response regarding this issue, but rather provided

only the same general information with little other explanation. Therefore, for these reasons we have not changed our treatment of NTN's sample and small-quantity home market sales for these final results. We have again determined these sales as within the ordinary course of trade and we have included them in our margin calculations.

We also re-examined the record to determine if evidence exists supporting NSK's categorization of its home market prototype and sample sales as outside the ordinary course of trade, and we agree with NSK that these sales represent ''atypical'' sales which we consider as outside the ordinary course of trade. In contrast to NTN, NSK provided ample narrative explanation and documentation allowing us to examine all factors of the sales it reported as not in the ordinary course of trade. Described by NSK as non-commercial quantity sales with abnormal prices, the small quantities and high-priced nature of these sales were not the only factors upon which NSK based its characterization of these sales as outside the ordinary course of trade. Rather, NSK provided at verification and in its response documentation which clearly demonstrated the unique circumstances surrounding the limited number of sales of those models it designated as sample/prototype models. In general, evidence provided by NSK demonstrated that (1) a prototype model is made only at the express request of a customer to address a specific need of the customer, (2) such models are used solely for testing purposes, (3) a specific prototype model was never sold to more than one particular customer, (4) there was no other demand for these models except for that of the specific customer who requested that the model be manufactured in the first place, (5) the price of the prototypes included tooling and die charges which are not included in the prices for ''normal'' home market sales, (6) several of those customers who requested and purchased a prototype model made only one purchase of the model during the entire review period, and (7) NSK's reported prototype/sample home market sales represent an insignificant portion of NSK's home market sales during the review period.

Clearly, in NSK's case we have been able to examine all factors surrounding the sale of NSK's home market prototypes/samples and, based on the evidence on the record, we have determined that these sales are not within the ordinary course of trade and have excluded them from our margin calculations.

Comments Concerning Discounts, Rebates, and Price Adjustments

*Comment 18:* The petitioner argues that in its preliminary results for NSK the Department incorrectly made direct adjustments to FMV for NSK's reported early payment discounts, return rebates, distributor incentives, performance incentives, post-sale price adjustments (PSPAs), lump-sum PSPAs, and stock transfer commissions. Timken also states that the Department, in its preliminary results for NTN, incorrectly allowed a direct adjustment for NTN's reported home market discounts. Timken contends that in light of recent CIT decisions and the Department's policy regarding such adjustments, as outlined in *AFBs 92/93*, the Department should reject entirely NSK's reported home market early payment discounts, distributor incentives, performance incentives, and lump-sum PSPAs, and NTN's home market discount adjustment. Timken also contends that, to the extent that any adjustment is allowed for NSK's reported home market return rebates and PSPAs, the Department should adjust for these expenses as indirect expenses.

NSK, citing numerous passages from the public version of the Department's 1992–93 NSK home market verification report dated July 8, 1994 (*NSK Report*), argues that the Department thoroughly verified each of these reported adjustments and correctly treated them as direct adjustments to FMV. NSK states that its distributor incentive rebate, early payment discount, and performance incentive rebate calculations reflect a fixed and constant percentage of sales and, as such, accurately reflect individual in-scope specific-transaction expense amounts. NSK adds that its PSPAs, lump-sum PSPAs, and return rebates also warrant direct adjustments to FMV. NSK further states that if the Department accepts Timken's position that none of these expenses warrant direct adjustment to FMV, the Department should, at a minimum, treat them as indirect adjustments to FMV.

NTN argues that it correctly allocated its discounts to in-scope merchandise and that there is no basis for the complete rejection of this expense.

*Department's Position:* In light of the CIT's decisions in *Torrington Co.* v. *United States*, 818 F. Supp. 1563, 1579 (1993) (*Torrington I*), and *Torrington Co.* v. *United States*, 881 F. Supp. 622, 640 (March 31, 1995) (*Torrington II*), which state that the Department may not use a methodology which allows for the inclusion of PSPAs and rebates on out-of-scope merchandise when calculating adjustments to FMV, and the CIT's decision in *Torrington Co.* v. *United States*, 832 F. Supp. 379, 390 (1993), which restated the above and also applied the same rationale to discount adjustments to FMV, for these final results we have followed our policy as detailed in *AFBs 92/93*.

In general, we accept claims for direct discount, rebate, and price adjustments to FMV if actual amounts are reported for each transaction and the adjustment is not based on allocations. Discounts, rebates, and price adjustments based on allocations are not allowable as direct adjustments to FMV because allocated adjustments have the effect of distorting individual prices by diluting the discounts or rebates received on some sales, inflating them on other sales, and attributing them to still other sales that did not actually receive any. Thus, they have the effect of partially averaging prices. Just as we do not allow respondents to report average prices, we do not allow average direct additions to or subtractions from FMV. Although we usually average FMVs on a monthly or, where appropriate, annual basis, we require individual prices to be reported for each sale. However, if allocated scope-specific adjustments were granted as a constant and fixed percentage of sales on all transactions for which they were reported, such that the allocations reflected the actual amounts for each individual sale, we allow the adjustment as a direct adjustment to FMV. Alternatively, if these scope-specific adjustments were allocated on a customer- or product-specific basis, but there is no evidence of a fixed or constant percentage, we treat them as indirect selling expenses (*see AFBs 92/93* at 10929).

We also do not allow any direct adjustments to FMV if the allocation includes non-scope merchandise. The only exception is if the adjustment was granted as a fixed and constant percentage of all sales such that the apportionment of the total expense to in-scope and non-scope merchandise yielded the exact amount per unit paid on sales of in-scope merchandise (*see Torrington II* where the CIT cited the Federal Circuit's decision in *Smith Corona Group* v. *United States*, 713 F. 2d 1568, 1580 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1022 (1984)).

For these final results we have reviewed NTN's and NSK's reported discount, rebate, and price adjustments to FMV in light of this policy and we have made the following determinations:

(1) NSK's Early Payment Discounts: NSK calculated this adjustment using a distributor-specific allocation

methodology whereby it divided the total early payment discount amounts taken by a distributor during the POR by the total payments it received from the distributor during the review period. To derive its per-transaction discount expense amounts, NSK applied this ratio to the unit price of each of its reported transactions which reflected a sale to the specific distributor. While this adjustment reflects customer-specific allocations which include non-scope merchandise, we have determined that NSK's early payment discounts reflect a fixed and constant percentage of its sales to its distributors and warrant a direct adjustment to FMV.

NSK's distributors do not pay NSK each time a purchase is made (*i.e.*, on a transaction-specific basis). Rather, NSK bills the distributors and the distributors pay NSK for a month's purchases. This monthly payment reflects all purchases during the month of both in-scope and non-scope merchandise. Those distributors who pay early deduct from their monthly payment to NSK an amount equal to the discount rate NSK established for payment within that specific time period. The rate thus applies equally to all the merchandise covered by the payment. As stated by the CIT in *Torrington II*, ''in *Smith Corona* the court approved an apportionment of total rebates paid between in and out-of-scope sales because the apportionment yielded the actual amount per unit paid on sales of in-scope merchandise * * *. Such an apportionment was possible because the rebates in *Smith Corona* were granted as a fixed percentage of sales, regardless of the models sold.'' In the present case, regardless of the combination of in-scope and non-scope merchandise purchased by the distributor within the month, the discount rate granted remained the same and we found no evidence on the record to suggest that the distributor would have paid differently if only in-scope or only non-scope merchandise was purchased.

Furthermore, at verification we examined documentation that demonstrated that, for every distributor who received such discounts, the distributor's payments qualified it for the same discount category each month during the POR. In other words, each distributor consistently remitted payment to NSK the same number of days early each month during the POR. Although the rates a distributor received varied throughout the POR due to the fact that NSK altered its discount schedule throughout the POR, for the segment of the POR where each discount schedule was in effect, the rate granted to a distributor was fixed and constant within that segment because the distributor did not alter its payment pattern. When calculating its reported discounts NSK combined a distributor's rates throughout the POR such that the resulting factor reflected the average rate the distributor received throughout the POR. We have determined that, if NSK were simply to apply to a distributor's sales within each segment of the POR the rate in effect for the distributor during that same segment, the allocations would yield actual individual sale amounts and correctly apportion the expense to in-scope and non-scope merchandise. It was only when NSK combined its discounts into a single POR allocation that it distorted the fixed and constant discount percentages. Therefore, for these final results we have re-calculated NSK's reported discounts so that, each time a distributor's rate varied in the POR, that different rate is attributed to all of NSK's reported sales to that distributor within that segment of the POR. As a result, we have made a direct adjustment to FMV for NSK's early payment discounts, re-calculated as discussed above.

(2) NSK's Return Rebates: For certain home market sales made by related and unrelated distributors, NSK grants a return rebate on a customer- and part number-specific basis. To derive this expense factor, NSK totaled return amounts paid to a distributor for a specific part number during the POR, then divided this amount by the total sales value of that part from NSK to the distributor. NSK then applied this ratio to the unit price reported for each of its sales to the distributor of the specific part number to yield an expense for each transaction. Since the allocation was part-specific, it is necessarily scope-specific and accurately reflects an adjustment attributable to in-scope merchandise alone. At verification we verified that NSK correctly reported a return rebate adjustment only for those sales which may have involved return rebates. However, although NSK's calculations produce part-specific allocations, there is no evidence on the record that NSK granted these rebates as a fixed and constant percentage of its sales. As a result, we cannot ascertain that the transaction amounts NSK reported are identical to those that were actually incurred for each individual sale. Therefore, we have treated NSK's reported return rebates as indirect selling expenses and adjusted FMV accordingly.

(3) NSK's Distributor Incentives: For those distributors who sold in-scope and non-scope NSK merchandise to NSK-approved sub-distributors, NSK granted the distributors incentive rebates equal to a set percentage of the distributor's gross sales value (based on the distributor's price to the sub-distributor) to the approved sub-distributors. We verified that this percentage did not change during the POR, since throughout the POR the eligible distributors' rebate amounts were equal to a constant and fixed percentage of each distributor's sales to the approved sub-distributors. While we recognize that NSK incurred this expense as a fixed percentage of its distributors' sales to certain sub-distributors, we note that NSK did not report this expense in the same manner. Rather, NSK reported its rebate amounts as a percentage of its own sales to each distributor during the POR. In other words, the amount of rebates paid to a distributor during the POR was divided by NSK's sales to the distributor during the POR and the resulting ratio was applied to the unit price of each sales transaction to the distributor reported in NSK's response. While the rebate amounts NSK incurred where a function of NSK's distributors' sales to certain sub-distributors, they were not a function of NSK's sales to the distributor. NSK provided no evidence suggesting that the rebates were a function of the sales to the distributor over which they were allocated, nor did it provide evidence demonstrating that there was a direct relationship between its sales to a distributor and the distributor's sales to a sub-distributor. Therefore we are not convinced that NSK incurred this expense as a constant and fixed percentage of NSK's sales to its distributors. In addition, by reporting this expense on the basis of its sales to distributors, NSK neither calculated accurate individual-transaction expense amounts nor did it accurately apportion the expenses to in-scope and non-scope merchandise. We have, therefore, disallowed an adjustment to FMV for NSK's reported distributor incentives.

(4) NSK's performance Incentives: During the POR NSK granted to certain distributors an incentive rebate based on the distributors' improvement in sales over a specified time period. The percentage of the rebate granted was directly dependent upon a distributor's percentage increase in purchases from NSK. NSK calculated its performance rebates expense factor by dividing the total rebates granted to a distributor during the POR by NSK's totals sales of both in-scope and non-scope merchandise to the distributor during the POR. At verification NSK demonstrated that a distributor received a constant rebate percentage where its

percentage improvement in sales was unchanged throughout the POR. However, the distributor's improvement depended on additional purchases of both in-scope and non-scope merchandise. NSK did not identify what portion of that improvement was attributable to in-scope merchandise, and provided no means by which we could determine that portion attributable to in-scope purchases. As a result, it is reasonable to conclude that, if all additional non-scope purchases were excluded, the improvement attributable to only in-scope merchandise could be at a percentage rate different from the rate for the overall improvement in purchases. Based on the evidence, we have determined that NSK's allocation methodology does not result in an accurate apportionment of these expenses to in-scope merchandise. In addition, the evidence on the record does not provide an alternative method that would allow us to remove the expense amounts reported for non-scope merchandise. We have, therefore, disallowed this adjustment.

(5) NSK's PSPAs: NSK's PSPAs reflect NSK's alteration of prices for completed transactions, alterations to provisional prices to reflect negotiated price agreements, and corrections of clerical errors. NSK calculated its reported individual-transaction PSPAs by dividing the total PSPAs made for a customer per part number during the POR by NSK's total sales of the part to the customer during the POR. NSK applied the resulting ratio to the unit price for all its reported sales of the part to the customer. As we stated earlier when discussing NSK's return rebates, since a part-specific allocation is necessarily scope-specific, NSK's allocation methodology clearly calculates the actual expense attributable to in-scope merchandise. However, we have determined that this allocation is neither transaction-specific nor representative of a fixed and constant percentage. For example, NSK does not trace the adjustments directly to the actual transactions for which they were incurred, but rather aggregates all PSPAs by customer and by part, allocates them, and applies the allocation ratio equally to all transactions. In addition, there is no evidence demonstrating the NSK's PSPAs were granted as a fixed and constant percentage of all sales to the customer. Rather, the percentage adjustment for each PSPA varied according to the specifics of each negotiated price, clerical error, or other alteration in individual prices. We have, therefore, treated NSK's reported PSPAs as indirect selling expenses.

(6) NSK's Lump-Sum PSPAs: To derive its reported lump-sum PSPA individual-transaction expense amounts, for each customer NSK totaled the lump-sum price adjustment granted during the POR and then divided this by its total POR sales to the customer. Then, for each of its reported sales to the customer, NSK applied the resulting ratio to the reported unit price. We verified that NSK either attributed the lump-sum rebate correctly to the part number to which it applied (*i.e.*, the rebate was scope-specific), or it correctly attributed a PSPA amount granted on a group of products to the in-scope merchandise. However, we found no evidence on the record or at verification that supports the notion that NSK's lump-sum price adjustments were transaction-specific or granted as a fixed and constant percentage of all sales to a customer. Therefore, we have treated NSK's reported lump-sum PSPAs as indirect selling expenses.

(7) NSK's Stock Transfer Commission: When NSK does not have a specific part available, whether an in-scope or non-scope part, a distributor who needs the part may obtain it from another of NSK's distributors. NSK then grants the latter distributor a percentage of the price the needy distributor was ultimately paid for the part by its customer. In this way, these stock transfers are very similar to NSK's distributor incentive rebates in that the commission amount NSK pays to the distributor who locates the part is based on the needy distributor's price to the ultimate customer. Like its distributor incentive rebates, NSK allocated these commissions on the basis of its sales to the distributor to which the commission was paid. As a result, these commissions are reported as a function of a total sales value to which they have no direct relationship, and there is no evidence that a direct relationship exists between NSK's sales to the distributor which had the part and the needy distributor's sales to the end user to which the part was ultimately sold. Therefore, as we explained for NSK's distributor incentives, while the commissions were granted as a fixed and constant percentage of the needy distributor's sales to the end user, they were not granted as a fixed and constant percentage of NSK's sales to the supplying distributor. We have, therefore, disallowed this adjustment.

(8) NTN's Discounts: We have reexamined NTN's discount adjustment methodology and have concluded that, while NTN's reported discounts accurately reflect the actual per-unit discount expense NTN incurred on in-scope merchandise, NTN's allocation methodology is not transaction-specific and there is no evidence on the record that NTN grants its discounts as a fixed percentage of its sales. For these final results we have, therefore, treated NTN's reported home market discounts as indirect selling expenses.

With the exception of NSK's early payment discounts, our final determinations regarding the above adjustments to FMV reflect changes from our preliminary results. We have, therefore, adjusted our final results margin calculations for NSK and NTN accordingly.

Comments Concerning Cost of Production and Constructed Value

*Comment 19:* The petitioner argues that, in accordance with section 773(e)(2) of the Tariff Act, when calculating statutory profits added to CV in accordance with section 773(e)(1)(B) of the Tariff Act, the Department should exclude those sales to related parties which it determined were not at arm's length.

NTN argues that nothing in the statute suggests that the Department should determine whether a sale was at arm's length when calculating profit for CV. NTN and NSK point out that the issue is moot in this current review because the Department found that all of NTN's and NSK's home market related-party sales were at arm's length.

*Department's Position:* As indicated by both NTN and NSK, the two respondents in this review for which an arm's-length test was required, we found all related-party home market sales at arm's length. As a result, Timken's concerns are unfounded in these reviews and we have not altered our calculations for NTN and NSK for these final results.

*Comment 20:* Timken argues that statutory profit calculations should also exclude home market below-cost sales which have been disregarded in accordance with section 773(b) of the Tariff Act. Timken argues that because CV is a proxy for FMV when prices and other data are inadequate or unavailable, and because below-cost sales are disregarded when sales form the basis of FMV, balance in the statute requires that the same sales be disregarded for CV as are disregarded for FMV, citing *Timken Company* v. *United States,* 11 CIT 785, 797, 673 F. Supp. 495, 507 (CIT 1987) and *Associacion Colombiana Exportadores de Flores* v. *United States,* 13 CIT 13, 19 704 F. Supp. 1117, 1124 (CIT 1989). Timken also argues that below-cost sales should be excluded from the CV profit

calculation because such sales are not in the ordinary course of trade. Timken contends that because the definition of CV specifies that statutory profits should be calculated on the basis of sales in the ordinary course of trade (section 773(e)(1)(B) of the Tariff Act), below-cost sales, when in substantial quantities over an extended period of time, must be disregarded when calculating profit for CV.

Timken also points out that the United States has taken the position that disregarded below-cost sales are not considered as sales in the normal course of trade, as referred to in Article VI of the General Agreement on Tariffs and Trade (GATT) and the Antidumping Code. Finally, Timken recognizes the recent decision by the CIT against its position, but respectfully submits that the decision was in error.

NSK argues that the below-cost sales test (section 773(b) of the Tariff Act) applies only when the Department bases FMV on home market or third-country prices. It does not extend to the CV provision because, in NSK's view, Congress specifically did not intend to apply it to CV. NSK further adds that the statute's definition of ''ordinary course of trade'' (section 771(15) of the Tariff Act) does not limit sales in the ordinary course of trade to sales above cost. NSK also contends that the fact that section 771(15) of the Tariff Act as amended by the recently passed Uruguay Round Agreements Act (URAA) specifically characterizes below-cost sales as outside the ordinary course of trade constitutes evidence that the previous statute, the one in effect for these TRB reviews, meant the contrary.

NTN argues that the structure of the statute as a whole indicates that there was no Congressional intent to link the concepts of sales in the ordinary course of trade and sales below the cost of production. NTN contends that the Department correctly interprets the statute by making its ordinary-course-of-trade determination prior to the determination of whether sales are below cost. To do so any other way, argues NTN, would be redundant because sales below cost would have already been excluded as not in the ordinary course of trade. NTN maintains that the petitioner has provided no evidence of its position and further states that the very structure of the CV calculation demonstrates that it is intended to approximate a sale made above cost.

*Department's Position:* We disagree with Timken that, in these reviews, the calculation of profit for CV should be based only on sales that are priced above COP. While we recognize that section 771(15) of the URAA requires the exclusion of such sales from our CV profit calculation, these TRB reviews, which were initiated prior to January 1, 1995, are being conducted pursuant to previous law and regulations. In *Torrington II*, ruling on the law in effect prior to January 1, 1995, not only did the CIT affirm that CV is an alternative to price-based FMV and that sales prices are irrelevant to a CV calculation, but it specifically stated that ''nowhere does the statute require the exclusion of below-cost sales when determining the profit amount in calculating CV'' (*Torrington II* at 633). We have, therefore, not excluded below-cost sales from our CV profit calculation for these final results.

*Comment 21:* NSK claims that the Department violated the antidumping law by never establishing the grounds for collecting cost data from related-party suppliers. NSK contends that, pursuant to section 773(e)(3) of the Tariff Act, the Department has the right to disregard sales prices NSK paid to related-party suppliers in favor of the supplier's COP only if (1) the Department has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the COP of the input, and (2) the information being requested is for a ''major'' input. NSK argues that, because the language in section 773(e)(3) of the Tariff Act is identical to that in 773(b) of the Tariff Act (the provision which grants the Department the authority to conduct cost investigations), the same threshold standard is applicable. In other words, NSK argues that, because the petitioner never alleged that NSK purchased an input from a related supplier at less than COP, and because the Department never alleged or substantiated that transfer prices from related suppliers were less than COP, let alone whether the input was a ''major'' input, reasonable grounds for the collection of this data did not exist.

NSK further contends that the Department has no other statutory authority for requesting related-supplier COP data and that there is no evidence on the record to support the Department's disregard of NSK's related-supplier transfer prices. Finally, NSK concludes that the Department should not use this illegally-obtained related-supplier information and should strike it from the record of these reviews.

Timken argues that the Department's preliminary results decision regarding NSK's related-supplier transfer prices was justified and in accordance with the law. Timken contends that the standard for analyzing below-cost sales pursuant to section 773(b) of the Tariff Act does not require any allegation by domestic parties. Likewise, accepting NSK's position that the identical language of section 773(e)(3) and 773(b) constitutes the application of the same standard, Timken maintains that there is therefore no requirement that the domestic party has the burden of submitting evidence of below-cost related-party supplier transfer prices. In fact, Timken maintains that the respondent should bear the responsibility of providing such evidence because domestic producers simply to not have access to the respondent's books and records, or access to what inputs were purchased from related suppliers. Timken adds that, given the nature of TRB production, it is also nearly impossible to submit data regarding the production costs at every stage of production that might be a transfer point. Furthermore, the petitioner states that to require allegations from the domestic party as a prerequisite for the Department's ability to investigate would effectively curtail the inherent authority of the Department to conduct below-cost sales and related-party transfer price investigations. Timken also maintains that the Department's collection of NSK's related-supplier transfer prices was justified because NSK has engaged in below-cost selling. Timken argues that, given that NSK does sell at below-cost prices, it is reasonable to infer that its losses are passed back to related suppliers which are forced to transfer inputs at a loss. Finally, Timken asserts that there is ample evidence on the record for these reviews supporting the Department's decision to disregard NSK related-party transfer prices.

*Department's Position:* We disagree with NSK. NSK erroneously argues that it was unlawful for the Department to request cost data for parts purchased from related suppliers. NSK's argument is grounded on the mistaken notion that section 773(e)(3) of the Tariff Act provides the sole basis for requesting cost information regarding inputs purchased from related suppliers. Two separate sections of the Tariff Act direct the Department to disregard transfer prices for certain transactions: section 773(e)(2) which directs us to disregard transfer prices if the transfer prices for ''any element of value'' do not reflect their normal market value, and section 773(e)(3) which directs the Department to disregard transactions if the transfer prices for ''major inputs'' are below cost of production.

For CV purposes, pursuant to section 773 (e)(2), the Department, in general, determines whether the transfer prices

for any element of value occurred below the normal market value of that element of value. Pursuant to these statutory provisions, we do not use transfer prices between related companies to value any element of value if such prices do not fairly reflect the amount usually reflected in sales of the merchandise under consideration in the market under consideration. This is sometimes referred to as the requirement for an ''arm's-length'' price. To determine whether the transfer prices reflect arm's-length prices, we normally compare the transfer price to (1) the prices related suppliers charge to unrelated parties, or (2) the prices charged by unrelated suppliers to the respondent. If we disregard a transaction because the respondent cannot demonstrate that the transaction was made at arm's length, and there are no other transactions available for consideration, then we must rely on the ''best evidence available'' to determine the value of the element of value. In other words, if there are no arm's length prices for components to compare to transfer prices, ''Commerce generally use[s] the cost of the components as representative of the value reflected in the market under consideration'' (*see Final determinations of Sales at less Than Fair Value: Antifriction Bearings (Other Than tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany et al.,* 54 FR 18992 (1989) (*AFBs LTFV*). In that situation, we must determine whether to use the reported cost data as the ''best evidence available.'' Otherwise, we cannot fulfill our statutory obligation of valuing elements of value for CV purposes.

Furthermore, NSK erroneously argues that, before we can request cost data for inputs, we must have a specific and objective basis for suspecting that the transfer price paid to a particular related supplier for a major input is below the related supplier's COP. NSK's argument is based on the erroneous assumption that we must rely upon section 773(e)(3) to request information regarding transfer prices of components parts. As demonstrated above, section 773(e)(3) simply provides an alternative basis for requesting transfer price information. We agree with the petitioner's argument that, when a domestic party files a COP allegation, it does not necessarily have information about inputs which are obtained from related suppliers. We also agree that the petitioner does not have the information necessary to specifically allege that a particular input or element of value from a related party is priced below COP. Therefore, the petitioner cannot necessarily make COP allegations regarding specific related-party inputs. As a result, we consider our initiation of a cost investigation of the subject merchandise that is based on a petitioner's allegation a specific and objective reason to believe or suspect that the transfer price from a related party for any element of value may be below the related suppliers' COP.

In accordance with our standard practice (*see, e.g., Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From France,* 60 FR 10538, (February 27, 1995) and *AFBS LTFV*), we asked NSK to provide cost data for inputs produced by related parties. NSK complied with our request for information and supplied the transfer prices and cost of production of inputs from its related parties. The record for these reviews demonstrates that in its response NSK also submitted a comparison of the weighted-average transfer prices for those inputs NSK purchased from both related and unrelated suppliers. By this comparison NSK intended to show the arm's-length nature of its transfer prices where inputs were purchased from both related and unrelated suppliers. This comparison, however, was not useful in determining whether related-supplier transfer prices were at arm's length because it listed only a limited number of instances where NSK purchased an identical or similar input from both a related and unrelated supplier. Because we could not rely on NSK's related-party transfer price comparison, we examined in detail the submitted COP and transfer prices for all of NSK's related suppliers. We found that, contrary to NSK's claim, transfer prices from related suppliers were often below the suppliers' COP for that input (*see* the proprietary version of the Department's COP and CV adjustment memorandum for NSK dated August 9, 1994 (*NSK COP/CV Memo*)). Because NSK was unable to demonstrate that elements of value included in its submitted CV calculations were reflective of their normal market value, the submitted related-party cost information was required by law. Hence, we did not strike NSK's reported related-party cost information from the record for these reviews. To the contrary, for these final results, we relied on NSK's submitted related-party cost information if the COP for the input exceeded the transfer price NSK reported for the input.

*Comment 22:* NSK argues that the Department unreasonably adjusted its reported general and administrative (G&A) expenses to include certain non-operating expenses which were clearly not G&A expenses and not part of NSK's COP.

The petitioner argues that the Department's inclusion of certain expenses NSK omitted from its reported G&A expenses was proper and in accordance with past Departmental practice.

*Department's Position:* We agree with the petitioner. At verification we discovered that NSK excluded from its reported G&A expenses several items which we consider to be part of the cost of producing the subject merchandise (see the *NSK CV/COP Memo* for an itemization of these expenses). We therefore included these cost items in NSK's G&A expense calculation and adjusted NSK's reported COP and CV figures accordingly.

*Comment 23:* The petitioner argues that the revised credit expense ratio NTN reported for use in those margins calculations where the Department based FMV on CV is distortive. To eliminate this distortion, Timken contends that the Department should use a specific ratio originally submitted by NTN rather than this revised ratio.

NTN points out that the revised CV credit expense ratio it submitted was calculated at the specific request of the Department. NTN further states that the Department may choose to use either this revised ratio or the separate ratios it originally reported in its response.

*Department's Position:* We agree with the petitioner. In its initial questionnaire response NTN provided us with two separate credit ratios to be used for CV purposes. One was for NTN sales and it was based on the weighted-average POR credit expense for NTN. The other was for NTN Sales Company, Ltd. (NSCL), and it was based on NSCL's weighted-average POR credit expenses. Upon receipt of these ratios we agreed that they accurately reflected NTN's and NSCL's average credit expenses throughout the POR, but we were unable to separate certain of NTN's and NSCL's sales within our home market sales computer data bases. This precluded us from applying the separate credit expense ratios. In our supplemental questionnaire we asked NTN to either submit an NTN/NSCL combined credit expense ratio or indicate a way in which we could distinguish between certain of NTN's and NSCL's sales within our data bases. NTN chose to submit a combined ratio. We agree with Timken that this combined ratio is distortive. However, since the issuance of our preliminary results we have derived a method for distinguishing between certain of NTN's and NSCL's sales within our computer data bases. As a result, because they

accurately reflect the average credit expenses incurred by NTN and NSCL during the POR, we have determined to use the separate NTN and NSCL credit expense ratios NTN initially reported in our CV margin calculations and we have done so for these final results.

*Comment 24:* Timken argues that NSK failed to demonstrate that interest income was related to the normal production of TRBs. Timken contends that the Department must recalculate NSK's financing expense by disallowing the interest income offsets.

NSK argues that at verification the Department reviewed and accepted its method for calculating interest expense. Therefore, NSK contends that the Department should not alter its preliminary results calculations by disallowing NSK's interest income offset.

*Department's Position:* We agree with NSK. We verified that the interest income offset was attributed to short-term investments of NSK's working capital. Therefore, we reduced NSK's interest expense by the amount of the company's reported short-term interest income.

*Comment 25:* NTN argues that the adjustment the Department made to its CV and further-manufacturing calculations with respect to a certain related party was incorrect for two reasons. First, NTN contends that the Department's re-calculations, which applied an overall figure to all products, were, in essence, a *de facto* use of BIA. NTN argues that BIA was not justified because it submitted all the necessary CV and further-manufacturing data the Department would need to recalculate its CV and further-manufacturing costs without restoring to an overall figure for all products. Second, NTN states that the Department's recalculations incorrectly used figures from an exhibit in its original questionnaire response and NTN indicated the correct figures the Department should have used from another exhibit in its response.

Timken argues that the Department's recalculations of NTN's reported CV and further-manufacturing costs were not based on BIA but on actual data from NTN's response. Timken further notes that the figures from the exhibit which NTN claims the Department should use are also incorrect. Timken provided figures from the same exhibit which it states should be used in the Department's recalculation.

*Department's Position:* We agree in part with the petitioner and the respondent. We used information that was submitted by NTN and its related supplier for our calculation of the adjustment in our preliminary results. Therefore, our adjustment was not based on BIA. The submitted cost of inputs from a related party were included at the transfer price which was below the COP. Therefore, we increased NTN's cost of manufacturing (COM) to reflect the related-supplier's COP. However, as both the petitioner and the respondent pointed out, one of the amounts we used in the related-party input adjustment calculation for the preliminary results was incorrect. We intended to use the cost of goods manufactured (COGM) from NTN's sample plant, but, instead, we used only the material cost of the sample plant. We revised our adjustment calculation for the final results to reflect the COGM of the sample plant as we had intended for the preliminary results. In calculating the COGM, we included the effect of the plant's change in the work-in-process inventory

*Comment 26:* Timken argues that NTN's reported repacking expenses for its further-processed merchandise are unrealistic and that the Department should re-examine NTN's further-processing calculations, determine if NTN has misreported these expenses, and make any appropriate adjustments for the final results.

NTN argues that the U.S. packing expenses it reported for its further-processed merchandise were accurate and that the Department should not change its treatment of these expenses for these final results.

*Department's Position:* We agree with the respondent. Based on the information on the record, we have no reason to conclude that NTN's submitted packing costs are understated. Accordingly, no adjustment to these packing costs is appropriate.

*Comment 27:* Timken argues that NTN incorrectly reported its depreciation on idle production assets by not treating it as an overhead expense in calculating COM, and that the Department should adjust NTN's COP calculation accordingly.

NTN argues that the method it used to report its idle asset depreciation is identical to that used by the Department's accounting office in a recent AFB verification. NTN further states that its depreciation on idle assets is unrelated to producing subject merchandise and is properly not part of COP. NTN also argues that it has reported its costs in accordance with the Generally Accepted Accounting Principles (GAPP) of Japan and that the Department should therefore accept its reported COP calculations.

*Department's Position:* We agree with NTN that it properly accounted for costs associated with depreciation of its idled equipment. The equipment at issue was never used to produce subject merchandise. In these instances we normally include the depreciation expense of idle production assets as part of G&A expenses. Because NTN included the depreciation expense associated with all idle equipment for the entire plant in its submitted G&A expense calculation, an adjustment for depreciation of idle equipment is unnecessary.

*Comment 28:* Timken argues that NTN has not demonstrated that its reported interest income offsets are related to normal operation or short-term deposits. in particular, Timken points out that NTN's interest income includes income from the sales of market securities, which Timken contends is unlikely to be derived from the short-term investment of working capital. Timken further argues that the Department should eliminate the effects of foreign exchange adjustments on NTN's corporate financing rate. The petitioner states that the Department has generally rejected accounting adjustments that influence corporate financing rates and should do so again here.

NTN argues that it has used the exact methodology in this review as it has in past reviews of TRBs and that, absent a reason for rejecting this methodology, the Department should accept its reported interest income offsets and financing expenses.

*Department's Position:* We agree in part with the petitioner. In our preliminary results we computed interest expense using the unconsolidated financial statements of NTN and its related selling entity NSCL. For the final results we recalculated interest expense using information from NTN's consolidated financial statements, which is consistent with our normal practice. We reduced NTN's consolidated interest expense by NTN's submitted unconsolidated short-term interest income and we excluded the income from the trading of marketable securities, gains on foreign exchange transactions, and NSCL's reported interest income from our recalculation of NTN's financing expense. In this case, we did not offset NTN's interest expense by amounts received from marketable securities investments because the income from these securities was not shown to be derived from the company's short-term working capital investments. We did not include the foreign exchange transaction gains because we could not confirm that the reported amounts related to costs included in NTN's COP and CV figures.

We excluded the submitted short-term interest income of NSC because the amount reported exceeded the total amount of interest income reported in NSCL's submitted financial statements.

*Comment 29:* Timken contends that level-of-trade differences have no meaning within the context of CV because CV is intended to reflect expenses generally incurred on sales of subject merchandise in the home market. Timken argues that the Department must therefore eliminate from NTN's CV calculations any data related to differences in levels of trade.

NTN argues that level-of-trade differences do have meaning within the context of CV because its selling expenses are incurred in different amounts for each level of trade. NTN contends that the Department has consistently accepted its home market expenses differentiated by level of trade and should not ignore this distinction in the context of CV.

*Department's Position:* We agree with NTN. We are satisfied that NTN's allocation of its home market selling expenses by level of trade reflects the fact that NTN incurs different selling expenses when selling at different levels of trade, and that these level-of-trade differences in selling expenses are reflective of NTN's experience in selling TRBs in Japan. Section 772(e)(B) of the Tariff Act states that the CV calculation must include ''an amount for general expenses and profit equal to that usually reflected * * *.'' By retaining its level of trade distinction for those expenses it included in its CV calculation, NTN reported CV amounts which captured its actual experience in selling TRBs in Japan and ensured that its CV calculations included expense amounts equal to those which are usually incurred.

Miscellaneous Comments Regarding Level of Trade, VAT-Adjustment Methodology, Assessment and Cash Deposit Rates, Suppliers' Knowledge, and Revocation

*Comment 30:* NSK contends that the Department should add taxes to USP whenever such taxes are assessed in the home market, but that it should not add taxes to FMV or otherwise calculate FMV so as to include taxes, whether FMV is based on home market price, third country sales, or CV. NSK argues that the plain language of the statute does not define FMV to include taxes imposed in the home market. Furthermore, NSK states that if Congress had meant to include taxes in every calculation of FMV, the statute, at a minimum, would have defined third country prices and CV to include such taxes. NSK also argues that, even if the Department rejects its position, the methodology the Department used in the preliminary results is incorrect. NSK maintains that in the preliminary results the Department did not apply the VAT to the proper tax base. NSK states that the CIT has made it very clear that the VAT must be applied to USP at the same point in the chain of commerce as the Japanese tax authorities apply the VAT on home market sales, citing *Federal-Mogul Corp.* v. *United States*, 834 F. Supp. 1391, 1396 (CIT 1993) (*Federal-Mogul*). NSK contends that, according to Japanese law, the VAT is applied to the net revenue of the sale with no offset for expenses, whereas the Department adjusted all expenses for VAT in its preliminary results.

Timken argues that, contrary to NSK's position, the Federal Circuit's decision in *Zenith Elec. Corp.* v. *United States*, 988 F.2d 1573 (Fed. Cir. 1993), is dispositive that FMV was intended to include VAT. Timken further contends that, given the language of section 772(d)(1)(C) of the Tariff Act, there is no question that the ''price'' referenced in section 773(a) of the Tariff Act must include VAT, if applicable. The petitioner also argues that the Department's preliminary results VAT-adjustment methodology did in fact correctly apply the tax rate to USP at the same point in the chain of commerce and appropriately implemented the statute and the CIT's instructions in *Federal-Mogul*.

*Department's Position:* Concerning NSK's first argument that taxes should never be added to FMV, we disagree. Taxes imposed in the foreign market are an integral part of the final price paid by the customer and are only ''added'' when reference is made to a tax-exclusive home market gross price. Furthermore, section 772(d)(1)(C) of the Tariff Act directs us to adjust for any taxes which are rebated or uncollected by reason of exportation to the extent that such taxes are added to or included in the price of home market such or similar merchandise. This means that taxes should be included in the prices used by the Department in its calculation of FMV.

Concerning our preliminary results VAT-adjustment methodology, in light of the decision by the United States Court of Appeals for the Federal Circuit (the Federal Circuit) in *Federal-Mogul* v. *United States*, CAFC No. 94–1097, we have changed our treatment of home market consumption taxes. For these final results, where merchandise exported to the United States was exempt from the consumption tax, we added to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that we adopted following the decision of the Federal Circuit in *Zenith* v. *United States*, 988 F.2d 1573, 1582 (1993), and which was suggested by the Federal Circuit in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal-Mogul* v. *United States*, 834 F. Supp. 1391 (1993), and we acquiesced to the CIT's decision. We then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; we made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal-Mogul* case, however, appealed the decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the ''*Zenith* footnote 4'' methodology to calculate taxneutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

We have determined that the ''*Zenith* footnote 4'' methodology should be used. First, as we have explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the Gatt and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the GATT. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section

772(d)(1)(C) of the pre-URAA law required that the tax be added to U.S. price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, we have elected to treat consumption taxes in a manner consistent with our longstanding policy of tax-neutraility and with the GATT. We have applied this tax-neutral methodology to our final margin calculations for NTN, NSK, Fuji, and Honda, the four companies for which we made a VAT-adjustment in our preliminary margin calculations and for which a VAT-adjustment was again necessary for these final results.

*Comment 31:* NSK argues that the Department's margin calculations for NSK were artificially inflated because the Department failed to make an appropriate level-of-trade adjustment when comparing home market such or similar merchandise to U.S. merchandise sold at a different level of trade. NSK contends that there is sufficient evidence on the record to quantify a level-of-trade adjustment based on the weighted-average differences in prices at each level of trade and concludes that the Department must grant NSK such an adjustment when the comparison home market merchandise was sold at a different level of trade than the U.S. merchandise.

NTN argues that, while the Department correctly made a level-of-trade adjustment when comparing home market such or similar merchandise to U.S. merchandise sold at a different level of trade, the Department's adjustment, which was cost-based, did not take into account the full price differences between NTN's levels of trade. NTN contends that the recently-enacted URAA endorses such an adjustment, and that, in accordance with section 1677b(a)(A) of the URAA, the evidence in this review clearly demonstrates that differences in NTN's levels of trade affect price comparability based on a consistent pattern of price differences between sales at different levels of trade in Japan.

Timken argues that the Department properly did not grant NSK a level-of-trade adjustment because NSK failed to provide cost-based data documenting its entitlement to such an ajdustment. The petitioner points out that the Department and the CIT have consistently held that cost-based data, and not the existence of price differentials alone, constitute the evidence necessary to support a level-of-trade adjustment. Timken maintains that while the record demonstrates that there are price differences between NSK's reported home market levels of trade, NSK provided no evidence demonstrating that these price differences were due to the different costs NSK incurred in selling to different levels of trade.

The petitioner also argues that, under the governing law for these reviews, NTN still is not entitled to a price-based level-of-trade adjustment because it has not met the burden of quantifying the price-based level-of-trade adjustment that it seeks. Finally, Timken contends that, while these subject reviews are not governed by the URAA because they were initiated prior to January 1, 1995, even if the Department were to apply the requirements of the new law to NTN's analysis, NTN would still not be entitled to a price-based level-of-trade adjustment because it has not demonstrated that there is a consistent pattern of price differences between sales at different levels of trade.

*Department's Position:* We disagree with NTN and NSK. As described below, NSK's request for a level-of-trade adjustment was untimely, and NTN did not qualify for the price-based level-of-trade adjustment it seeks.

We have examined NSK's initial and supplemental questionnaire responses and, while NSK provided evidence demonstrating that it sells to distinct levels of trade, it did not request that we make a level-of-trade adjustment when comparing home market such or similar merchandise sold at one level to U.S. merchandise sold at another level. In fact, only in its case brief did NSK first argue that a level-of-trade adjustment should be made and first argue that this adjustment should be price-based. For this reason we find NSK's request for such an adjustment to be untimely and we have not considered it for these final results (*see, e.g., Fijitsu General Ltd.* v. *United States,* Slip Op. 95–44 at 28 (CIT March 14, 1995), *Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Italy: Final Results of Antidumping Duty Administrative Review,* 57 FR 8295 (March 9, 1992), *Final Determination of Sales at Less Than Fair Value: Certain Steel Pails From Mexico,* 55 FR 12245 (April 2, 1990), and *Final Determination of Sales at Less Than Fair Value: Stainless Steel Woven Wire Cloth From Japan,* 50 FR 10520 (March 15, 1985)).

We have examined the record evidence for NTN to determine if a price-based level-of-trade adjustment is warranted. Basically, in accordance with 19 CFR 353.58, in order to make the type of price-based level-of-trade adjustment NTN seeks, we would have to be satisfied that the full difference in prices between levels of trade was due solely to level-of-trade differences and no other factors. If quantitative analysis reveals that there is a pattern of price differences between levels of trade, then we can reasonably conclude that level-of-trade differences alone affected price comparability. If a pattern is not evident, then we can only conclude that other factors, and not level-of-trade differences alone, caused the price differences between levels of trade. For these final results we conducted such a quantatitive analysis on NTN's home market prices, as reported in its home market sales computer data base. For each home market model that NTN sold to each of its three distinct levels of trade, we calculated, for each level of trade, a weighted-average net price adjusted for all those home market selling expenses which we determined in our analysis warranted a direct adjustment to FMV. We then calculated the percentage differences in the weighted-average prices between levels of trade for all models in each month the models were sold throughout the POR. We then compared these monthly, model-specific percentage differences to determine if a pattern of price differences at different levels of trade was evident.

Our comparison of NTN's percentage price differences revealed that there were numerous models for which there was no pattern in price differences between levels of trade in that the pricing order for certain random months was the reverse of the pricing order in other months. For example, for many models the pricing order for several months was, from highest priced to lowest, level-of-trade 2, level-of-trade 3 and then level-of-trade 1. However, in other random months the order was reversed such that, from highest to lowest, the order was level-of-trade 3, level-of-trade 1, then level-of-trade 2. Furthermore, even in those months where the pricing order was the same, the range of percentage price differences between levels was erratic in that a model may have been sold at a price slightly higher at level 1 in one month, but much higher at level 1 in another month. Therefore, absent a discernible pattern in the price differences between level-of-trade, we lack the evidence necessary to grant NTN a priced-based level-of-trade adjustment.

*Comment 32:* Fuji agrees that the Department properly excluded from its preliminary results margin calculations that merchandise which met the criteria for the application of the ''Roller Chain'' principle, and which was, as a result, outside the scope of the Japanese TRBs order and finding. However, Fuji contends that unless the Department adopts one of the three assessment

strategies Fuji proposes, the Department will overassess the amount of antidumping duties owed by Fuji and will be in violation of the antidumping duty law because it will apply antidumping duties to non-scope merchandise.

Fuji first proposes that because it had fewer than fifty entries during the review period, the Department should assess duties on an entry-by-entry basis. Alternatively, Fuji proposes that, because all of those TRBs which qualify for exclusion under the ''Roller Chain'' principle were imported by a single related importer, Subaru-Isuzu Automotive, Inc. (SIA), the Department should assess duties on an importer-specific basis and apply zero duties to all SIA imports. Fuji adds that if the Department selects this option it should also adjust its calculated cash deposit rate for Fuji to take into account the ''Roller Chain'' merchandise by including the value of the ''Roller Chain'' merchandise in the denominator. Finally, Fuji proposes that, if the Department rejects these first two proposals, the Department, at a minimum, should then adjust both Fuji's cash deposit and assessment rates by including the value of the TRBs meeting the ''Roller Chain'' criteria in the denominators the Department uses when calculating these rates.

Kawasaki argues that although the Department resorted to BIA for its preliminary results margins for Kawasaki, and will presumably do so again for these final results, this should not preclude the Department from determining that those TRBs which meet the ''Roller Chain'' criteria and those TRBs manufactured by a German company but sold by Kawasaki in the United States constitute out-of-scope merchandise and are therefore not subject to antidumping duty assessment. Kawasaki contends that there is sufficient evidence on the record to demonstrate that certain of its TRBs not only meet the criteria for the ''Roller Chain'' principle, but all such TRBs were imported only by Kawasaki Motors Manufacturing Corporation (KMM). Kawasaki further contends that it has demonstrated that certain other TRBs imported by Kawasaki Loaders Inc. (KLI) were originally manufactured by a German company and sold to Kawasaki in Japan by the German company's Japanese affiliate. Kawasaki maintains that the Department should ensure the exclusion of its German-made TRBs from assessment by simply identifying to Customs the unique model numbers for such TRBs as reported in its response. Kawasaki argues that the record in the A–588–054 case contains the information necessary for the Department to recalculate its BIA rate such that duties are not assessed on Kawasaki's ''Roller Chain'' TRBs. Finally, Kawasaki states that, because KMM did not import any TRBs which fell within the scope of the A–588–604 order, the Department's BIA rate would not require any recalculation.

The petitioner argues that because at the time of entry there is no way of knowing that a particular entry will meet the ''Roller Chain'' principle criteria, the Department should require cash deposits on all entries. Timken further argues that including the value of Fuji's and Kawasaki's ''Roller Chain'' TRBs in the denominator of the cash deposit calculations would result in the underassessment of antidumping duties because importers ultimately receive refunds of all duty deposits on ''Roller Chain'' entries.

*Department's Position:* We agree in part with the petitioner and in part with the respondents. It is important to first make clear that merchandise which meets the criteria of the ''Roller Chain'' principle is not out-of-scope merchandise. Our determination in an administrative review that the ''Roller Chain'' principle is applicable to certain merchandise is not the equivalent of a determination that the merchandise is non-scope merchandise. To the contrary, in these TRB reviews, that merchandise which we have deemed to be ''Roller Chain'' merchandise clearly falls within the scope of the A–588–054 finding and the A–588–604 order, as described earlier in this notice. Based on section 772(e)(3) of the Tariff Act and the applicable legislative history, we have developed a practice whereby we do not calculate and do not assess antidumping duties on subject merchandise which is imported by a related party and which is further processed where the subject merchandise comprises less than one percent of the value of the finished product sold to the first unrelated customer in the United States (*Roller Chain Other Than Bicycle From Japan*, 48 FR 51804 (November 14, 1983), and *AFBs 92/93* at 10937)). The statute provides for the assessment of antidumping duties only to the extent of the dumping that occurs. If there can be no determination of any dumping margin where the imported merchandise is an insignificant part of the product sold, then there is no dumping to offset and antidumping duties are not appropriate. We therefore do not consider ''Roller Chain'' merchandise as non-scope merchandise, but rather as scope-merchandise which is not subject to duty assessment.

We disagree with Fuji that our cash deposit rates should somehow take into account merchandise meeting the ''Roller Chain'' criteria because we have no way of knowing at the time of entry whether any particular entry qualifies under the ''Roller Chain'' principle for exclusion from assessment of antidumping duties. Our decision to exclude any merchandise is made on a case-by-case basis within the course of an administrative review, which takes place after the actual entry of the potentially excludable merchandise. For this reason, at the time of entry we must require cash deposits of estimated antidumping duties on all entries, including those entries of merchandise potentially excludable from assessment under the ''Roller Chain'' principle. Furthermore, cash deposit rates are estimates of dumping liability. Because at the time of entry we have no idea of the value of merchandise which we may ultimately determine as meeting the ''Roller Chain'' criteria, we cannot alter our cash deposit rate to effectively compensate for the value of the ''Roller Chain'' merchandise in the current review, which may be a value significantly different from that in the future.

We also disagree with Fuji that entry-by-entry assessment is a viable option for its assessment. Entry-by-entry assessment requires the traditional appraisement instructions which list each entry and the margin calculated for it. The disadvantages of such assessment are numerous. For example, because our dumping analysis focuses on sales, it is necessary for us to associate reviewed sales with entries in some way. However, companies are generally unable to make such a link. In addition, such appraisement instructions are burdensome, time-consuming, and at risk for error. It is therefore the position of the Department that assessment rates applicable to all covered entries are preferable. In comparison to entry-by-entry assessment, the use of an assessment rate which applies to all entries during the POR is far less burdensome and time-consuming. In addition, the risk of incorrect assessment is minimized. In general, we have tried to calculate assessment rates on an importer-specific basis to prevent one importer from paying antidumping duties attributable to margins found on sales to a different importer. However, this concern for importer-specific rates is limited to those instances where the importer is not related to the foreign exporter. Where the importer is related to the foreign exporter, we consider the related

parties to constitute one corporate entity and the use of manufacturer/exporter-specific assessment rates to be appropriate. Therefore, we also reject Fuji's proposal that we adopt an importer-specific rate for SIA, its related U.S. subsidiary, and we will calculate one rate for Fuji's related importers.

We have determined that Fuji's final proposal, that the assessment rate take into account the value of the ''Roller Chain'' merchandise, is the most viable assessment option and would ensure that antidumping duties are not assessed on that merchandise we determined to meet the ''Roller Chain'' principle criteria. As explained above, we do not agree that the cash deposit rate should be altered in any way. Therefore, to ensure that assessment does not occur on ''Roller Chain'' merchandise, we will include the value of the ''Roller Chain'' merchandise in our denominator. This will have the effect of ''diluting'' the percentage assessment rate so that, even though antidumping duties will be assessed on all entries, the lower ''diluted'' percentage assessment rate (which will still result in the collection of the actual amount of antidumping duties owed) will effectively exclude the ''Roller Chain'' merchandise from assessment.

Concerning Kawasaki's alleged ''Roller Chain'' merchandise, as the record for these reviews demonstrates, due to a consistent pattern of late submissions in response to our questionnaires and the quality of the information contained in Kawasaki's timely responses, we rejected all of Kawasaki's untimely responses and used total cooperative BIA rates for Kawasaki in our 1992–93 reviews for both the A–588–054 and A–588–604 cases (*see, e.g.,* the Department's 1992–93 decision memorandum for Kawasaki, dated April 13, 1995). Kawasaki contends that information contained in its two timely responses, dated February 10, 1994, and May 24, 1994, respectively, which were not rejected by the Department and, as such, are part of the administrative record for these 1992–93 TRB reviews, demonstrates the ''Roller Chain'' nature of KMM's imports. For these final results we have reviewed Kawasaki's two timely submissions and have determined that neither submission contains evidence demonstrating the ''Roller Chain'' nature of KMM's imported TRBs. Our examination of Kawasaki's May 24, 1994, submission revealed that this submission dealt exclusively with TRBs imported and sold by KLI and did not contain any information concerning those TRBs imported by KMM. Our examination of Kawasaki's February 10, 1994, submission revealed that, while this submission contained information about KMM's imported TRBs, it did not contain sufficient evidence demonstrating the ''Roller Chain'' nature of KMM's imports. For example, page 4 of the submission indicates that all of KMM's imported TRBs are used solely in the manufacture of motorcycles and all-terrain vehicles (ATVs). Attachment 3 of the submission contains a listing of the product codes for the TRBs KMM imported along with the corresponding product copies of the finished motorcycle or ATV into which the TRBs were incorporated. Page 6 of the submission contains the POR total value of KMM's imports along with a statement by Kawasaki indicating that the value of these TRBs is less than one percent of the value of the finished ATVs and motorcycles. However, this submission does not contain any analysis, or the raw data necessary for us to conduct an analysis, comparing the value of the imported TRBs to the value of the finished motorcycles or ATVs. As a result, we lack the data necessary for use to determine with certainty that the value of those TRBs imported by KMM and used solely in the manufacture of motorcycles and ATVs in the United States was indeed less than one percent of the value of the finished motorcycles and ATVs. We therefore do not agree with Kawasaki that evidence on the record demonstrates the ''Roller Chain'' nature of KMM's imports and we will not calculate Kawasaki's assessment rate for the 1992–93 review of the A–588–054 case to reflect the value of its alleged ''Roller Chain'' merchandise. However, because KMM imported TRBs within the scope of the A–588–054 finding only, we agree with Kawasaki that no recalculation of its A–588–604 assessment rate is warranted.

As for Kawasaki's German-made TRBs, proper identification on entry documents by Kawasaki of the German origin of the merchandise should ensure that this merchandise is properly treated as outside the scope of these TRB cases and not assessed antidumping duties resulting from these reviews. However, to ensure that only Japanese-made TRBs are subject to antidumping duties, we will instruct Customs to apply Kawasaki's rates for both cases to Japanese-made TRBs only.

*Comment 33:* Timken argues that because Honda has been a part of numerous reviews and because in Japan a manufacturer/supplier participates actively in the design, technology, manufacture, and quality control of the products it supplies, all Japanese suppliers of TRBs to Honda know for a fact that a portion of the TRBs they supply to Honda, a reseller, are destined for export to the United States. The petitioner contends that simply because those of Honda's Japanese suppliers who are also subject to these reviews claim not to know which group of TRBs will in fact be shipped to the United States, this does not overshadow the fact that these suppliers have knowledge that a portion of those TRBs they supply to Honda are destined for exportation to the United States. Timken therefore concludes that this portion of Honda's purchases from its Japanese suppliers should be reclassified as suppliers' purchase price sales and the Department has an obligation to review these sales using the prices paid by Honda in Japan as USP.

Honda argues that section 772(b) of the Tariff Act does not apply to those instances where a supplier might have general knowledge that merchandise was destined for export to the United States, but only in those situations where the supplier knew or had reason to know that the specific merchandise it sold to Honda was subsequently exported by Honda to the United States. Honda, citing the Department's 1992–93 home market verification report for Honda dated July 20, 1994 (*Honda Ver. Report*), contends that there is no evidence on the record to support the conclusion that Honda's Japanese suppliers knew or had reason to know that TRBs purchased by Honda would be exported to the United States. Both Honda and NTN maintain that in prior reviews of the AFBs cases, the petitioner in that case raised the identical issue and the Department repeatedly rejected such a contention. Honda and NTN therefore conclude that, absent evidence to the contrary, the Department must reject Timken's position in these current TRB reviews.

*Department's Position:* We agree with the respondent. It has been our practice to define a U.S. sale as a sale in which a manufacturer is informed in advance or has reason to know at the time of sale that the product sold in the home market was destined for exportation to the United States. Furthermore, the evidence on the record must demonstrate this actual or constructed knowledge (*see AFBs 92/93* at 10950, *Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review,* 58 FR 11211 (February 24, 1993), *Oil Country Tubular Goods From Canada, Final Results of Antidumping Duty Administrative Review,* 55 FR 50739 (December 10, 1990), and *Ferrovanadium and Nitride Vanadium From the Russian Federation; Notice of*

*Final Determination of Sales at Less Than Fair Value,* 60 FR 27957 (May 26, 1995)). At our home market verification of Honda for the 1992–93 Japanese TRB reviews we specifically addressed the issue of supplier knowledge and examined various documents in an effort to determine whether Honda's Japanese suppliers knew at the time of sale that the merchandise they sold was to be exported to the United States (*see Honda Ver. Report* at 7–8). We concluded that, while Honda's Japanese suppliers may realize in general that a portion of the parts they supplied to Honda would eventually be shipped to the United States, we found no evidence that these suppliers could determine at the time of sale whether a part was to be sold by Honda domestically, for export, for export to the United States, or whether it would be sold for replacement purposes or for original equipment manufacture. We have therefore treated Honda as a TRB reseller for these final results and have not reclassified any portion of Honda's purchases from certain Japanese suppliers as suppliers' purchase price sales.

*Comment 34:* The petitioner argues that the Department should not proceed with the final revocation of Honda from the A–588–054 finding for two fundamental reasons. First, arguing that the determination to revoke must be based on the most up-to-date information available, Timken contends that the period of three consecutive years of no dumping margins which the Department has relied on for Honda is too outdated to serve as a basis for revocation. Second, Timken points out that, under the recently-enacted URAA, the ''Roller Chain'' principle has been effectively eliminated. Thus, Timken contends, imports previously excluded from margin calculations and assessment are, under the new law, subject to review and the application of antidumping duties. While Timken recognizes that these 1992–93 Japanese TRB reviews are governed by the pre-January 1, 1995, law, the petitioner contends that the Department cannot reasonably predict that Honda is not likely to dump in the future because there has never been an analysis of Honda's ''Roller Chain'' TRBs.

Honda argues that the period of three consecutive years of zero (0.0) margins the Department has relied on as a basis for revocation is adequate because there is no limitation on the ''remoteness'' of this period in 19 CFR 353.25(a)(2) of the Department's regulations. In addition, Honda states that Timken has overlooked the fact that, in accordance with its policy to conduct an ''update'' review when a significant delay in finalizing a tentative revocation has occurred, the Department has conducted such an update review in this 1992–93 review of the A–588–054 finding and has again found zero percent dumping margins for Honda. Honda further argues that Timken's position that the Department cannot reasonably predict that there is no likelihood that Honda will dump in the future is essentially an attempt by Timken to retroactively apply the new law to a revocation proceeding clearly governed by the pre-January 1, 1995, law. Honda maintains that such a retroactive application is in direct contradiction to Congress's expressed intent to apply the new law only to those administrative reviews requested on or after January 1, 1995.

*Department's Position:* We agree with Honda. As explained in our preliminary results of review for these 1992–93 reviews, we found no dumping margins for Honda's sales for the period January 1977 through July 1980. As a result, in accordance with our revocation requirements in effect at the time, on September 1, 1981, we published in the Federal Register (46 FR 43864) our tentative determination to revoke Honda from the A–588–054 finding. Based on the fact that we again found no dumping margin for Honda for the period August 1, 1980, through September 1, 1981 (the ''gap period''), on May 14, 1984, we published our intent to revoke Honda from the finding (*TRB 90/92 Prelim* at 22353). Due to a unique pattern of events which we thoroughly detailed in our preliminary results notice, we did not proceed with final revocation of Honda and, as a result, the ''Intent to Revoke'' notice we published in May 1984 has lost its official standing (*TRBs 90/92 Prelim* at 22353).

In October and November 1992 the petitioner requested and we initiated a review of Honda in the A–588–054 finding. We conducted a thorough verification of Honda and preliminarily determined that Honda again had no margin. As a result, we decided to publish, along with our preliminary results notice of these current reviews, our intent to revoke Honda from the A–588–054 finding. We also explained that, under the revocation procedures in effect at the time Honda's revocation proceeding began, the intent-to-revoke stage of the renovation usually covers the ''gap period.'' However, in accordance with our policy in similar situations, we conducted an update review of the most recent one-year period in lieu of the ''gap period.'' We first adopted this in light of the CIT's concern in *Freeport Minerals* v. *United States,* 776 F. 2d 1029 (CIT 1985), that revocation determinations be based on ''current data,'' and it reflects a consistent practice which has been approved by the CIT (*see Television Receivers, Monchrome and Color, From Japan,* 55 FR 35916 (September 4, 1990), *Roller Chain Other Than Bicycle, From Japan,* 56 FR 50093 (October 3, 1991), and *Matsushita Electric Industrial Company* v. *United States,* 12 CIT 455, 688 F. Supp. 617, 623 (1988), *aff'd,* 861 F.2d 257, 7 Fed. Cir. (T) 13 (1988)).

Therefore, Timken's contention that we did not base our revocation of Honda on the most current data available is unfounded. We clearly collected, analyzed, and verified the most current sales information and other data available from Honda. Thus, our decision to proceed with final revocation of Honda from the A–588–054 finding is not only based on a demonstrated past history of no dumping by Honda (the three-year period of no dumping margins pursuant to 19 CFR 353.25(a)(2)), but on a current confirmation that Honda has continued not to dump TRBs (the 1992–93 update review).

We also disagree with the petitioner's contention that the elimination of the ''Roller Chain'' principle under the new law precludes us from reasonably predicting that Honda is not likely to sell TRBs at LTFV in the future. As explained in our response to Comment 30 above, based on the relevant legislative history of section 772(e)(3) of the Tariff Act, we concluded that Congress did not intend that USP be calculated and that antidumping duties be assessed when the imported value of subject merchandise that is imported and then further-processed is insignificant in comparison to the value of the finished merchandise (*see* Rep No. 1298, 93d Cong. 2d Sess. 172–73, 245, *reprinted in* 1974 U.S.C.C.A.N. 7185, 7130). We therefore established the ''Roller Chain'' principle by which we consider as ''insignificant'' the value of imported merchandise that constitutes less than one percent of the value of the finished product (*see, e.g., AFBs 92/93* at 10937). In other words, because there can be no determination of dumping in situations where the value of certain imported subject merchandise is an insignificant part of the value of the product sold in the United States, then it follows that such merchandise does not play a role in a determination of whether dumping is likely to recur. Because we base our likelihood determination on evidence currently on the record, ''Roller Chain'' merchandise is not a factor in our likelihood determinations pursuant to the law and regulations governing these

reviews. Were we to allow the exclusion of the ''Roller Chain'' principle under the new law and ''Roller Chain'' merchandise itself to influence our likelihood determination for Honda at this time, not only would we, in effect, be imposing an unreasonable burden on Honda to re-qualify for revocation under a new set of standards, but, most importantly, we would be retroactively applying the new statute, which is proscribed when Congress clearly expresses a statute's effective date, as it did here in section 291 of the URAA (*see Landgraf* v. *USI Film Products,* 114 S. CT. 1483 (1994)). For these reasons we do not agree that ''Roller Chain'' merchandise should be a factor in our likelihood determination and we have based our likelihood determination on the factors described below.

The evidence on the record clearly demonstrates that Honda has not dumped TRBs in the past and is not likely to dump TRBs in the future. We have found no margins for Honda in all the reviews of the A–588–054 finding in which we reviewed Honda. Not only has Honda demonstrated a consecutive three-year of no dumping margins, but it demonstrated that in the nearly 15 years since the Department's last review of the firm, it continued not to dump. It is also important to note that our consistent calculation of no margins for Honda is not dependent upon the presence of ''Roller Chain'' merchandise. In other words, not all of Honda's entries were exempt under the ''Roller Chain'' principle. Honda also exports to the United States a significant amount of TRBs which are imported by American Honda, Honda's sales subsidiary in the United States, and sold to unrelated U.S. customers for replacement purposes. These U.S. sales constitute Honda ESP sales and we have based our past and current margin calculations on these replacement-part TRB sales. As a result, our repeated determinations of no dumping margins for Honda reflect Honda's actual pricing practices in the United States and constitute clear and uncontroverted evidence that Honda does not engage in dumping pricing practices. There is no evidence on the record indicating that Honda is likely to dump in the future. In fact, since there was nearly a 15-year gap between this current review and our last review of Honda, we have had the rare opportunity to examine Honda's pricing practices after a nearly 15-year period of no examination whatsoever. The fact that, after 15 years of no review, we have found no dumping by Honda in the current review, only provides additional support for our determination that Honda is unlikely to sell TRBs at LTFV in the future. Furthermore, our calculation of no margin for Honda after 15 years is even more persuasive because the substantial appreciation of the yen against the dollar over the years would make the incidence of dumping margins after such an extended period even more likely. For these reasons, we have determined that Honda is not likely to sell TRBs at LTFV in the future, and, since Honda has met all other requirements for revocation, we are revoking the A–588–054 finding with respect to Honda.

Clerical Errors

*Comment 35:* The petitioner, providing two examples from the Department's preliminary results margin calculations for NTN, contends that the Department failed to apply set-splitting ratios to the home market commission and credit expense amounts NTN reported for TRB sets the Department split into individual cup and cone sales. Timken concludes that this error resulted in the failure to calculate accurate credit and commission expense amounts for individual cups and cones split from TRB sets, and, as a result, distorted the Department's margin calculations for NTN.

*Department's Position:* We agree in part with Timken. In the beginning of our preliminary results computer program for NTN we calculated home market net prices by deducting from NTN's reported gross prices several direct expenses, including home market commissions and credit. It is this net price variable which we split to derive the net price attributable to the individual cups and cones split from TRB sets, and it is the price which we eventually weight-averaged prior to comparison to U.S. sales. Because this net price reflects a price already adjusted for credit and commissions, it is unnecessary to carry the components we used to derive this price into the set-splitting portion of our programs. In other words, by splitting the net price, which is already adjusted for commissions, credit, and other direct expenses, it becomes unnecessary to split the components used to derive the net price. However, if for some reason it was necessary for us to retain one of these components for the final margin calculations we conduct at the end of our computer program, it would then be necessary to preserve the expense variable and calculate the amount of that expense attributable to split cups and cones.

For NTN we conduct our commission offset later in our margin calculation program. While we correctly weight-averaged this variable, we did not include it in the set-splitting portion of our program. This had the effect of overstating the weighted-average commission amounts because split cups and cones simply retained the commission amount NTN reported for the parent set. In this case we agree with Timken and corrected this error for these final results.

In contrast to commissions, we did not use the credit variable at any point after its original deduction from the net price. As a result, it was unnecessary to retain this variable for individual weight-averaging or later margin calculations and unnecessary to include it in the set-splitting portion of our calculations. Therefore, we disagree with Timken that there was an error in our treatment of the home market credit expense variable and we have not changed our treatment of this variable for these final results.

*Comment 36:* Timken contends that the Department failed to include all of NTN's U.S. expenses in its further-manufacturing calculations because the Department's calculated U.S. total direct selling expense amount, in comparison to its calculated U.S. manufacturing amount, appears to be ''exceptionally low.'' Timken argues that this discrepancy, of which it provided three examples from the Department's preliminary results NTN computer printouts, is due to either (1) the error it previously described in regard to NTN's home market credit expense variable, (2) some other error, or (3) NTN's failure to report accurate U.S. direct selling expense amounts.

*Department's Position:* We agree with the petitioner in part. First, as described in our response to Comment 35, there is no error in our treatment of NTN's home market credit expense variable. Furthermore, even if there were an error, this would have no effect on our calculation of total U.S. direct selling expenses for further-manufacturing purposes. However, based on the discrepancy in NTN's U.S. selling expense allocations addressed earlier in this notice, we have determined that the application of NTN's originally-calculated allocation ratios would have resulted in the understatement of NTN's U.S. selling expense amounts, including those direct selling expense amounts we relied on in our further-manufacturing calculations. Because we have re-allocated NTN's U.S. selling expense such that accurate per-unit expense amounts result, we have also eliminated those other discrepancies, such as the one Timken describes here, which

stemmed from NTN's incorrectly allocated U.S. selling expenses.

*Comment 37:* NSK argues that the Department relied on an improper COP variable when determining whether a home market sale occurred at, below, or above COP.

The petitioner states that the Department properly relied on that COP variable which would correctly implement the Department's decision to use the higher of transfer price or the actual COP of inputs NSK purchased from related suppliers.

*Department's Position:* We agree with Timken. In its home market computer data base NSK reported two separate COP amounts for each home market model. The first amount (COP1) reflected the total COP of the model using the transfer prices between NSK and its related suppliers for those inputs used in the model's production. The second amount (COP2) reflected the total COP of the model using not the transfer prices but the related supplier's actual COP for the inputs. As explained in our response to Comment 21, because we found that NSK's related-supplier transfer prices were not at market value, we made the appropriate adjustments in our analysis. One of these adjustments was intended to ensure that, if the COP1 amount NSK reported for a model (which was based on related-supplier input transfer prices) was less than the COP2 amount (which reflected the COP of the model based on the related suppliers' actual COP for the inputs used), then we would use COP2 as the COP for the model. We therefore did not make a clerical error, but rather chose the appropriate COP for our cost test.

Final Results of Review

Based on our review of the arguments presented above, for these final results we have made changes in our margin calculations for NTN, NSK, Fuji, and Honda. As explained in our preliminary results of these reviews, we used a cooperative-BIA rate, based on the highest calculated rate for any firm in the A–588–054 review as Kawasaki's margin in the A–588–054 case *(see TRBs 92/93 Prelim* at 22350). Because the highest calculated rate for the A–588–054 review has changed for these final results, we have adjusted Kawaski's A–588–054 BIA rate accordingly. The preliminary margins we calculated for all other companies and our preliminary determinations concerning the use of BIA, no shipments, and the terminations of the review have remained unchanged for these final results (*see TRBs 92/93 Prelim* at 22353, 22354).

As a result of our comparison of USP to FMV, we have determined that margins exist for the period October 1, 1992, through September 30, 1993, as follows:

*For the A–588–054 Review*

| Manufacturer/reseller/exporter | Margin (percent) |
|---|---|
| Nachi-Fujikoshi Corp | [1] 18.07 |
| NSK Ltd | 11.62 |
| Fuji | 1.76 |
| Honda | 0.0 |
| Kawasaki | 11.62 |
| Yamaha | 47.63 |
| MC Int'l | 0.45 |
| Maekawa | [1] 0.0 |
| Toyosha | 47.63 |
| Nigata | 47.63 |
| Suzuki | 47.63 |

[1] No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.

*For the A–588–604 Review*

| Manufacturer/reseller/exporter | Margin (percent) |
|---|---|
| NTN | 19.15 |
| Nachi-Fujikoshi Corp | 40.37 |
| NSK Ltd | 10.19 |
| Fuji | ([2]) |
| Honda | ([2]) |
| Kawasaki | 36.52 |
| Yamaha | 40.37 |
| MC Int'l | ([2]) |
| Maekawa | ([2]) |
| Toyosha | 40.37 |
| Nigata | 40.37 |
| Suzuki | 40.37 |
| Daido | ([2]) |
| Ichiyanagi Tekko | 40.37 |
| Nittetsu Bolten | 40.37 |
| Sumikin Seiatsu | 40.37 |

[2] No shipments or sales subject to this review. The firm has no rate from any segment of this proceeding.

As stated in our response to Comment 34 above, we have determined that Honda has met the requirements for revocation set forth in 19 CFR 353.54(f) (1988) of our regulations. We are therefore revoking the A–588–054 finding with respect to Honda. This revocation applies to all entries of TRBs and certain components thereof, four inches or less in outside diameter, subject to the A–588–054 case, exported by Honda, entered or withdrawn from warehouse, for consumption on after September 1, 1981, the date of the original tentative revocation, and for which liquidation remains suspended. The Department will instruct Customs to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after September 1, 1981, without regard to antidumping duties, to refund any estimated antidumping duties collected with respect to those entries, and to cease collecting cash deposits.

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rates for the reviewed companies other than Honda will be those rates outlined above;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in these reviews, a prior review, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise;

(4) If neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate for the A–588–054 finding will be 18.07 percent and 36.52 percent for the A–588–604 order (*see Preliminary Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan,* 58 FR 51058 (September 30, 1993)).

All U.S. sales by each respondent will be subject to one deposit rate according to the proceeding.

The cash deposit rate has been determined on the basis of the selling price to the first unrelated customer in the United States. For appraisement purposes, where information is available, the Department will use the entered value of the merchandise to determine the assessment rate. In the case of Fuji, the Department will calculate assessment rates which reflect the total value of that merchandise which we determined to meet the criteria for the ''Roller Chain'' principle.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.25 to file a certificate regarding the

reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews, revocation in part, and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 and 353.25.

Dated: October 29, 1996.

Robert S. LaRussa,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96–28444 Filed 11–6–96; 8:45 am]

**BILLING CODE 3510–DS–M**

## National Oceanic and Atmospheric Administration

**[I.D. 103196C]**

## South Atlantic Fishery Management Council; Public Meetings.

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a meeting of its Scientific and Statistical Committee, Ad Hoc Golden Crab Appeals Committee, joint Controlled Access and Snapper Grouper Committees and Snapper Grouper Advisory Panel, Snapper Grouper Committee, Advisory Panel Selection Committee, joint Shrimp Committee and Ad Hoc Shrimp Bycatch Advisory Panel, Highly Migratory Species Committee, and a Council session.

The Council welcomes written public comment on any of the agenda items. See **ADDRESSES** for the Council address to send in comments.

**DATES:** The meetings will be held from November 18-22, 1996. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held at the Sheraton Atlantic Beach Resort, Salter Path Road, Atlantic Beach, NC 28512; telephone: (800) 624-8875 or (919) 240-1155.

*Council address*: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

**FOR FURTHER INFORMATION CONTACT:** Susan Buchanan, Public Information Officer; telephone: (803) 571-4366; fax: (803) 769-4520; email: susan_buchanan@safmc.nmfs.gov

**SUPPLEMENTARY INFORMATION:**

Meeting Dates

*November 18, 1996, 1:30 p.m. to 5:30 p.m.*—Scientific and Statistical Committee;

The Scientific and Statistical Committee will meet to review the new Black Sea Bass and Amberjack Assessments and other relevant snapper grouper data. The Committee will also review the Snapper Grouper Amendment 8 draft public hearing document;

*November 18, 1996, 6:30 p.m. until business is complete*—Ad Hoc Golden Crab Appeals Committee;

The Ad Hoc Golden Crab Appeals Committee will meet to review any appeals received concerning golden crab permit applications;

*November 19, 1996, 8:30 a.m. to 12 noon*—joint Controlled Access and Snapper Grouper Committees and the Snapper Grouper Advisory Panel;

The Controlled Access and Snapper Grouper Committees will meet with the Snapper Grouper Advisory Panel to review the

Snapper Grouper Amendment 8 draft public hearing document;

*November 19, 1996, 1:30 p.m. to 5:30 p.m.*—joint Controlled Access and Snapper Grouper Committees and the Snapper Grouper Advisory Panel;

The Controlled Access and Snapper Grouper Committees will meet with the Snapper Grouper Advisory Panel to develop recommendations for Snapper Grouper Amendment 8 options to take to public hearing;

*November 20, 1996, 8:30 a.m. to 12 noon*—Snapper Grouper Committee;

The Snapper Grouper Committee will meet to develop recommendations for Snapper Grouper Amendment 8 options to take to public hearing;

*November 20, 1996, 1:30 p.m. to 2:30 p.m.*—Advisory Panel Selection Committee (closed session);

The Advisory Panel Selection Committee will meet in closed session to develop recommendations for appointment of advisory panel members;

*November 20, 1996, 2:30 p.m. to 5:30 p.m.*—joint Shrimp Committee and Ad Hoc Shrimp Bycatch Advisory Panel;

The Shrimp Committee will meet jointly with the Ad Hoc Shrimp Bycatch Advisory Panel to review the NMFS analysis and develop the final bycatch reduction device (BRD) testing protocol, and to discuss Council/NMFS/Atlantic States Marine Fisheries Commission coordination of BRD usage;

*November 21, 1996, 8:30 a.m. to 12 noon*—Highly Migratory Species Committee;

The Highly Migratory Species Committee will meet to discuss the future function of the committee, review the NMFS Shark Proposed Rule and Amendment 1 to the Shark Fishery Management Plan (FMP), and to discuss State/Federal cooperation in closing shark pupping areas;

*November 21, 1996, 1:30 p.m. to 6:00 p.m.*—Council Session;

The Council will receive the Shrimp Committee Report from 1:45 p.m. to 2:30 p.m., and will approve the final BRD testing protocol; from 2:30 p.m. to 3:00 p.m. the Council will receive the Highly Migratory Species report; at 3:00 p.m. the Council will take public comment regarding the control date for the spiny lobster fishery before reconsidering the control date; from 3:45 p.m. to 6:00 p.m. the Council will receive the Snapper Grouper Committee report and take public comment at 3:45 p.m. before approving Snapper Grouper Amendment 8 for public hearing;

*November 22, 1996, 8:30 a.m. to 12:00 noon*—Council Session;

The Council will receive the Advisory Panel Selection Committee report in closed session and appoint advisory panel members from 8:30 a.m. to 9:00 a.m. Beginning at 9:00 a.m., the Council will make calendar year 1997 budget adjustments, receive the status of Atlantic king mackerel catches, hear a report on the recreational demand workshop, hear a report on the status of implementation of the Golden Crab FMP, receive agency and liaison reports, and discuss other business.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by November 11, 1996.

Dated: November 1, 1996.

Richard W. Surdi,

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 96–28673 Filed 11–06–96; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Medical and Dental Reimbursement Rates for Fiscal Year 1997

Notice is hereby given that the Deputy Chief Financial Officer, in a memorandum dated September 19, 1996, established the following reimbursement rates for inpatient and outpatient medical care to be provided in FY 1997. These rates are effective October 1, 1996.

Inpatient, Outpatient and Other Rates and Charges

*I. Inpatient Rates* [1] [2]

| Per inpatient day | International military education and training (IMET) | Interagency and other Federal agency sponsored patients | Other |
|---|---|---|---|
| A. Burn Center | $2,107.00 | $3,824.00 | $4,086.00 |
| B. Surgical Care Services (Cosmetic Surgery) | 897.00 | 1,629.00 | 1,741.00 |
| C. All Other Inpatient Services (Based on Diagnosis Related Groups (DRG) Charges [3]) | | | |

1. FY 1997 Direct Care Inpatient Reimbursement Rates

| Adjusted standard amount | IMET | Interagency | Other (full/3rd party) |
|---|---|---|---|
| Large Urban | $2,154 | $4,141 | $4,392 |
| Other Urban/Rural | 2,275 | 4,344 | 4,635 |
| Overseas | 2,405 | 5,207 | 5,533 |

2. Overview

The FY 1997 inpatient rates are based on the cost per DRG, which is the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal diagnosis, secondary diagnoses, procedures, patient age, etc. involved. The average costs per Relative Weighted Product (RWP) for large urban, other urban/rural, and overseas facilities will be published annually as an inpatient Adjusted Standardized Amount (ASA). (See paragraph I.C.1, above). The ASA will be applied to the RWP for each inpatient case, determined from the DRG weights, outlier thresholds, and payment rules published annually for hospital reimbursement rates under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1), including adjustments for length of stay outliers. The published ASAs will be adjusted for area wage differences and indirect medical education (IME) for the discharging hospital. An example of how to apply DoD costs to a DRG standardized weight to arrive at DoD costs is contained in section 1.C.3, below.

3. Example of Adjusted Standardized Amounts for Inpatient Stays

Figure 1 shows an example for a nonteaching hospital in a large urban area.

a. The cost to be recovered is DoD's cost for medical services provided in the nonteaching hospital located in a large urban area. Billings will be at third party rate.

b. DRG 020: Nervous System Infection Except Viral Meningitis. The RWP for an inlier case is the CHAMPUS weight of 2.9769. (DRG statistics shown are from FY 1996.)

c. The DoD Adjusted Standardized Amount to be charged is $4,392 (the third party rate as shown in paragraph I.C.1).

d. DoD costs to be recovered at a nonteaching hospital with area wage index of 1.0 is the RWP factor in item b, above, times the amount in item c (2.9769×$4,392).

e. Cost to be recovered is $13,075.

FIGURE 1.—THIRD PARTY BILLING EXAMPLE

| DRG No. | DRG description | DRG weight | Arithmetic mean LOS | Geometric mean LOS | Short stay threshold | Long stay threshold |
|---|---|---|---|---|---|---|
| 020 | Nervous System Infection Except Viral Meningitis. | 2,9769 | 11.2 | 7.8 | 1 | 30 |

| Hospital | Location | Area wage rate index | IME adjustment | Group ASA | Applied ASA |
|---|---|---|---|---|---|
| Nonteaching Hospital | Large Urban | 1.0 | 1.0 | $4,392 | $4,392 |

| Patient No. | Length of stay | Days above threshold | Relative weighted product | | | TPC amount [3] |
|---|---|---|---|---|---|---|
| | | | Inlier [1] | Outlier [2] | Total | |
| 1 | 7 days | 0 | 2.9769 | 0.0000 | 2.9769 | $13,075 |
| 2 | 21 days | 0 | 2.9769 | 0.0000 | 2.9769 | 13,075 |

| Patient No. | Length of stay | Days above threshold | Relative weighted product | | | TPC amount [3] |
|---|---|---|---|---|---|---|
| | | | Inlier [1] | Outlier [2] | Total | |
| 3 | 35 days | 5 | 2.9769 | 0.8397 | 3.8166 | 16,763 |

[1] DRG weight.
[2] Outlier calculation=44 percent of per diem weight multiplied by the number of outlier days:
=.44×(DRG Weight/Geometric Mean LOS)×(Patient LOS Long Stay Threshold).
=.44×(2.9769/7.8)×(35 − 30).
=.44×(.38165)×5 (take out to 5 decimal places).
=.16793×5 (take out to 5 decimal places).
=.8397 (take out to 4 decimal places).
[3] Applied ASA×Total RWP.

*II. Outpatients Rates* [1 2]

| MEPRS code [4] | Per visit clinical services | International military education and training (IMET) | Interagency and other Federal agency sponsored patients | Other |
|---|---|---|---|---|
| | **A. Medical Care** | | | |
| BAA | Internal Medicine | $92 | $167 | $178 |
| BAB | Allergy | 34 | 61 | 66 |
| BAC | Cardiology | 61 | 111 | 119 |
| BAE | Diabetes | 57 | 103 | 110 |
| BAF | Endocrinology | 71 | 130 | 139 |
| BAG | Gastroenterology | 89 | 162 | 173 |
| BAH | Hematology | 89 | 162 | 173 |
| BAI | Hypertension | 60 | 108 | 116 |
| BAJ | Nephrology | 114 | 207 | 221 |
| BAK | Neurology | 86 | 156 | 167 |
| BAL | Nutrition | 24 | 43 | 46 |
| BAM | Oncology | 81 | 148 | 158 |
| BAN | Pulmonary Disease | 97 | 175 | 187 |
| BAO | Rheumatology | 73 | 133 | 142 |
| BAP | Dermatology | 54 | 98 | 105 |
| BAQ | Infectious Disease | 76 | 139 | 148 |
| BAR | Physical Medicine | 73 | 132 | 141 |
| | **B. Surgical Care** | | | |
| BBA | General Surgery | 107 | 193 | 207 |
| BBB | Cardiovascular/Thoracic Surgery | 92 | 167 | 178 |
| BBC | Neurosurgery | 108 | 197 | 210 |
| BBD | Ophthalmology | 72 | 131 | 140 |
| BBE | Organ Transplant | 109 | 199 | 212 |
| BBF | Otolaryngology | 83 | 150 | 160 |
| BBG | Plastic Surgery | 87 | 158 | 169 |
| BBH | Proctology | 63 | 114 | 122 |
| BBI | Urology | 93 | 169 | 180 |
| BBJ | Pediatric Surgery | 53 | 97 | 103 |
| | **C. Obstetrical and Gynecological (OB–GYN)** | | | |
| BCA | Family Planning | 59 | 108 | 115 |
| BCB | Gynecology | 67 | 121 | 129 |
| BCC | Obstetrics | 63 | 114 | 121 |
| | **D. Pediatric Care** | | | |
| BDA | Pediatric | 51 | 93 | 100 |
| BDB | Adolescent | 49 | 89 | 95 |
| BDC | Well Baby | 30 | 54 | 58 |
| | **E. Orthopaedic Care** | | | |
| BEA | Orthopaedic | 74 | 135 | 144 |
| BEB | Cast Clinic | 34 | 63 | 67 |
| BEC | Hand Surgery | 37 | 67 | 72 |
| BEE | Orthopaedic Appliance | 53 | 95 | 102 |
| BEF | Podiatry | 44 | 80 | 86 |

| MEPRS code [4] | Per visit clinical services | International military education and training (IMET) | Interagency and other Federal agency sponsored patients | Other |
|---|---|---|---|---|
| BEZ ..... | Chiropractic Clinic ..... | 24 | 44 | 47 |
| | **F. Psychiatric and/or Mental Health Care** | | | |
| BFA ..... | Psychiatry ..... | 79 | 144 | 154 |
| BFB ..... | Psychology ..... | 75 | 137 | 146 |
| BFC ..... | Child Guidance ..... | 46 | 83 | 89 |
| BFD ..... | Mental Health ..... | 71 | 129 | 138 |
| BFE ..... | Social Work ..... | 60 | 109 | 117 |
| BFF ..... | Substance Abuse Rehabilitation ..... | 60 | 110 | 117 |
| | **G. Primary Medical Care** | | | |
| BGA ..... | Family Practice ..... | 58 | 106 | 113 |
| BHA ..... | Primary Care ..... | 56 | 102 | 109 |
| BHB ..... | Medical Examination ..... | 50 | 91 | 97 |
| BHC ..... | Optometry ..... | 37 | 68 | 73 |
| BHD ..... | Audiology Clinic ..... | 27 | 48 | 52 |
| BHE ..... | Speech Pathology ..... | 60 | 108 | 116 |
| BHF ..... | Community Health ..... | 39 | 70 | 75 |
| BHG ..... | Occupational Health ..... | 51 | 92 | 98 |
| BHI ..... | Immediate Care Clinic ..... | 75 | 137 | 146 |
| | **H. Emergency Medical Care** | | | |
| BIA ..... | Emergency Care Clinic ..... | 91 | 164 | 176 |
| | **I. Flight Medicine Clinic** | | | |
| BJA ..... | Flight Medicine ..... | 85 | 154 | 164 |
| | **J. Underseas Medicine Care** | | | |
| BKA ..... | Underseas Medicine Clinic ..... | 26 | 46 | 50 |
| | **K. Rehabilitative Services** | | | |
| BLA ..... | Physical Therapy ..... | 24 | 44 | 47 |
| BLB ..... | Occupational Therapy ..... | 32 | 58 | 62 |
| BLC ..... | Neuromuscularskeletal Screening ..... | 20 | 37 | 39 |
| | **L. Ambulatory Procedure Visit** | | | |
| | | 413 | 746 | 797 |

*III. Other Rates and Charges*

| MEPRS code [4] | Per visit clinical service | International military education and training (IMET) | Interagency and other Federal agency sponsored patients | Other |
|---|---|---|---|---|
| FBI ..... | A. Immunizations ..... | $8.00 | $15.00 | $16.00 |
| DGC ..... | B. Hyperbaric Services [5] (per hour) ..... | 110.00 | 201.00 | 214.00 |
| | C. Family Member Rate (formerly Military Dependents Rate) ..... | 9.90 | | |

D. Reimbursement Rates for High Cost Drugs Requested by External Providers [6]

The FY 1997 high cost drug reimbursement rates are for prescriptions requested by external providers and obtained at the military treatment facility. The high cost drug reimbursement rates are too numerous to include in this notice. A complete listing of these rates is available on request from OASD (Health Affairs), LCDR Pat Kelly, (703) 681–8910.

E. Reimbursement Rates for High Cost Services Requested by External Providers [7]

The FY 1997 high cost services requested by external providers and obtained at the military treatment facility are too numerous to include in this notice. A complete listing of these rates is available on request from OASD (Health Affairs), LCDR Pat Kelly, (703) 681–8910.

F. Elective Cosmetic Surgery Procedures and Rates

| Cosmetic surgery procedure | International classification diseases (ICD–9) | Current procedural terminology (CPT) [8] | FY 97 charge [9] | Amount of charge |
|---|---|---|---|---|
| Mammaplasty | 85.50<br>85.32<br>85.31 | 19325<br>19324<br>19318 | Surgical Care Services or Ambulatory Procedure Visit. | (a)<br>(b) |
| Mastopexy | 85.60 | 19316 | Surgical Care Services or Ambulatory Procedure Visit. | (a)<br>(b) |
| Facial<br>Rhytidectomy | 86.82<br>86.22 | 15824 | Surgical Care Services or Ambulatory Procedure Visit. | (a)<br>(b) |
| Blepharoplasty | 08.70<br>08.44 | 15820<br>15821<br>15822<br>15823 | Surgical Care Services or Ambulatory Procedure Visit. | (a)<br>(b) |
| Mentoplasty (Augmentation/Reduction) | 76.68<br>76.67 | 21208<br>21209 | Surgical Care Services or Ambulatory Procedure Visit. | (a)<br>(b) |
| Abdominoplasty | 86.83 | 15831 | Surgical Care Services or Ambulatory Procedure Visit. | (a)<br>(b) |
| Lipectomy, Suction per Region [10] | 86.83 | 15876<br>15877<br>15878<br>15879 | Surgical Care Services or Ambulatory Procedure Visit. | (a)<br>(b) |
| Rhinoplasty | 21.87<br>21.86 | 30400<br>30410 | Surgical Care Services or Ambulatory Procedure Visit. | (a)<br>(b) |
| Scar Revisions beyond CHAMPUS | 86.84 | 1578__ | Surgical Care Services or Ambulatory Procedure Visit. | (a)<br>(b) |
| Mandibular or Maxillary Repositioning | 76.41 | 21194 | Surgical Care Services or Ambulatory Procedure Visit. | (a)<br>(b) |
| Minor Skin Lesions [11] | 86.30 | 1578__ | Surgical Care Services or Ambulatory Procedure Visit. | (a)<br>(b) |
| Dermabrasion | 86.25 | 15780 | Surgical Care Services or Ambulatory Procedure Visit. | (a)<br>(b) |
| Hair Restoration | 86.64 | 15775 | Surgical Care Services or Ambulatory Procedure Visit. | (a)<br>(b) |
| Removing Tattoos | 86.25 | 15780 | Surgical Care Services or Ambulatory Procedure Visit. | (a)<br>(b) |
| Chemical Peel | 86.24 | 15790 | Surgical Care Services or Ambulatory Procedure Visit. | (a)<br>(b) |
| Arm/Thigh Dermolipectomy | 86.83 | 1583__ | Surgical Care Services or Ambulatory Procedure Visit. | (a)<br>(b) |
| Brow Lift | 86.3 | 15839 | Surgical Care Services or Ambulatory Procedure Visit. | (a)<br>(b) |

G. Dental Rate

| MEPRS code [4] | Per visit clinical service [12] | International military education and training (IMET) | Interagency and other Federal agency sponsored patients | Other |
|---|---|---|---|---|
| CA | Dental Services (CTV 1) | $9.00 | $25.00 | $26.00 |
| CA | Dental Services (CTV 2) | 7.00 | 20.00 | 21.00 |
| CB | Dental Prosthetics Laboratory (CLV). | 2.00 | 6.00 | 6.00 |

H. Ambulance Rate [13]

| MEPRS code [4] | Per visit clinical service | International Military Education and Training (IMET) | Interagency & other Federal agency sponsored patients | Other |
|---|---|---|---|---|
| FEA | Ambulance Service | $57.00 | $103.00 | $110.00 |

I. High Cost Laboratory and Radiology Service [7]

| MEPRS code [4] | Per visit clinical service | International Military Education and Training (IMET) | Interagency & other Federal agency sponsored patients | Other |
|---|---|---|---|---|
| | High cost laboratory CPT–4 multiplier | $6.00 | $10.00 | $11.00 |
| | High cost radiology CPT–4 multiplier | 20.00 | 36.00 | 38.00 |

J. AirEvac Rate [14]

| MEPRS code [4] | Per visit clinical service | International Military Education and Training (IMET) | Interagency and other Federal agency sponsored patients | Other |
|---|---|---|---|---|
| | AirEvac Services (Ambulatory) | $89.00 | $162.00 | $173.00 |
| | AirEvac Services (Litter) | 265.00 | 481.00 | 513.00 |

Notes on Cosmetic Surgery Charges

[a] Charges for inpatient Surgical Care Services are contained in Section I.B. (See Notes 9 through 11 on reimbursable rates for further details.)

[b] Charges for Ambulatory Procedure Visits (formerly Same Day Surgery) are contained in Section II.L. (See Notes 9 through 11 on reimbursable rates for further details.)

Notes on Reimbursable Rates

[1] Percentages can be applied when preparing bills for both inpatient and outpatient services. Pursuant to the provisions of 10 U.S.C. 1095, the inpatient Diagnosis Related Groups and inpatient per diem percentages are 96 percent hospital and 4 percent professional fee. The outpatient per visit percentages are 58 percent hospital, 30 percent ancillary and 12 percent professional.

[2] DoD civilian employees located in overseas areas shall be rendered a bill when services are performed. Payment is due 60 days from the date of the bill.

[3] The cost per DRG (Diagnosis Related Groups) is based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal and secondary diagnoses, surgical procedures, and patient demographics involved. The adjusted standardized amounts (ASA) per Relative Weighted Product (RWP) for use in the Direct Care System will be comparable to procedures utilized by Health Care Financing Administration (HCFA) and the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS). These expenses include all direct care expenses associated with direct patient care. The average cost per RWP for large urban, other urban/rural, and overseas will be published annually as an adjusted standardized amount (ASA) and will include the cost of inpatient professional services. The DRG rates will apply to reimbursement from all sources, not just third party payers.

[4] The Medical Expense and Performance Reporting System (MEPRS) code is a three digit code which defines the summary account and the subaccount within a functional category in the DoD medical system. An example of this hierarchical arrangement is as follows:

| Outpatient care (functional category) | MEPRS code |
|---|---|
| Medical Care (Summary Account). | BA |
| Internal Medicine (Subaccount). | BAA |

MEPRS codes are used to ensure that consistent expense and operating performance data is reported in the DoD military medical system.

[5] Hyperbaric services are to be charged based on full hours and 15 minute increments of service. Providers should calculate the charges based on the number of hours (or fraction thereof) of service. Fractions of hours should be rounded to the next 15 minute increment (e.g. 31 minutes becomes 45 minutes).

[6] High cost prescription services requested by external providers (Physicians, Dentists, etc.) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for high cost prescriptions in those instances in which beneficiaries who have medical insurance, seen by providers external to a Military Medical Treatment Facility (MTF), obtain the prescribed medication from an MTF. Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. Medical Services Account (MSA) patients, who are not beneficiaries as defined in 10 U.S.C. 1074 and 1076, are charged at the ''Other'' rate if they are seen by an outside provider and come to the MTF for prescription services. A bill will be produced if the total prescription costs in a day (defined as 0001 hours to 2400 hours) exceeds $25.00 when bundled together. Bundling refers to the accumulation of a patient's bills during the previously defined 24 hour period. The standard cost of high cost medications includes the cost of the drugs plus a dispensing fee, per prescription. The prescription cost is calculated by multiplying the number of units (tablets, capsules, etc.) times the unit cost and adding a $5.00 dispensing fee per prescription.

[7] Charges for high cost ancillary services requested by external providers (Physicians, Dentists, etc.) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for high cost services in those instances in which beneficiaries who have medical insurance, are seen by providers external to an MTF, and obtain the prescribed service from an MTF. Laboratory and Radiology procedure costs are calculated using the CPT–4 weight multiplied by either the high cost laboratory or radiology multiplier (Section III.I). Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. MSA patients, who are not beneficiaries as defined by 10 U.S.C. 1074 and 1076, are charged at the ''Other'' rate if they are seen by an outside provider and come to the MTF for high cost services. A bill will be produced if the total ancillary services costs in a day (defined as 0001 hours to 2400 hours) exceed $25.00 when bundled together. Bundling refers to the accumulation of a patient's bill during the previously defined 24 hour period.

[8] The attending physician is to complete the Physicians' Current Procedural Terminology code to indicate the appropriate procedure followed during cosmetic surgery. The appropriate rate will be applied depending on the admission type of the patient, e.g., ambulatory procedure visit or inpatient surgical care services.

[9] Family members of active duty personnel, retirees and their family members, and survivors will be charged cosmetic surgery rates. The patient shall be charged the rate as specified in the FY 1997 reimbursable rates for an episode of care. The charges for elective cosmetic surgery are at the full reimbursement rate (designated as the ''Other'' rate) for Surgical Care Services in Section I.B., or Ambulatory Procedure Visits as contained in Section II.L of this attachment. The patient will be responsible for both the cost of the implant(s) in addition to the prescribed cosmetic surgery rates.

Note: The implants and procedures used for the augmentation mammaplasty are in compliance with Federal Drug Administration guidelines.

[10] Each regional lipectomy will carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

[11] These procedures are inclusive in the minor skin lesions. However, CHAMPUS separates them as noted here. All charges are for the entire treatment regardless of the number of visits required.

[12] Dental services are based on a Composite Time Value (CTV). Charges should be calculated based on the time value of the procedure times the CTV rate. The first CTV (1.0 value) shall be calculated using the CTV 1 rate. Any subsequent CTVs and portions thereof shall be calculated using the CTV 2 rate. The Composite Lab Value (CLV) should be used to calculate charges for dental appliances and prostheses.

[13] Ambulance charges are based on full hours and 15 minute increments of service. Providers should calculate the charges based on the number of hours (or fraction thereof) that the ambulance is logged out on a patient run. Fractions of hours should be rounded to the next 15 minute increment (e.g. 31 minutes becomes 45 minutes).

[14] Air in-flight medical care reimbursement charges are determined by the status of the patient (Litter or Ambulatory) and are per patient.

Dated: November 4, 1996.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 96–28660 Filed 11–6–96, 8:45 am]

**BILLING CODE 5000–04–M**

## Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning a Transportable Life Support System

**AGENCY:** U.S. Army Medical Research and Materiel Command, DOD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent Application Serial No. 08/610,823 entitled ''Transportable Life Support System'' and filed March 7, 1996 for licensing. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**ADDRESSES:** Commander, U.S. Army Medical Research and Materiel Command, ATTN: Staff Judge Advocate, Fort Detrick, Frederick, Maryland 21702–5012.

**FOR FURTHER INFORMATION CONTACT:** Mr. John F. Moran, Patent Attorney, (301) 619–2065 or telefax (301) 619–7714.

**SUPPLEMENTARY INFORMATION:** The invention is a stretcher-based mini-intensive care unit that incorporates resuscitative and life-sustaining capabilities into a universally adaptive platform for trauma management and unattended patient support. It allows the transport of medically unstable patients and fits into existing evacuation platforms. The system is specially designed for use in battlefield and mass casualty situations, and includes a base, a stretcher and a canopy. The system incorporates medical equipment that includes a ventilator, an oxygen source, an environmental control unit, a suction unit, a plurality of physiologic sensors, an intravenous fluid pump, a drug infusion pump, and a defibrillator. The medical equipment is controlled by a computer contained within the base, and a receiver/transmitter is included in the base for transmitting information to, and receiving information from, a remote health care provider.

Gregory D. Showalter,

*Army Federal Register Liaison Officer.*

[FR Doc. 96–28618 Filed 11–6–96; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of Proposed Information Collection Requests.

**SUMMARY:** The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by November 22, 1996. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before January 6, 1997.

**ADDRESSES:** Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will

this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 1, 1996.

Gloria Parker,

*Director, Information Resources Group.*

Office of Postsecondary Education

*Type of Review:* Reinstatement

*Title:* Jacob K. Javits Fellowship Program.

*Abstract:* These instructions and forms provide the U.S. Department of Education the information needed to select fellows for the Javits Program.

*Additional Information:* Due to Congressional intent, funding for the Jacob K. Javits Fellowship Program was authorized on September 28. Prior to then, Department staff had notified interested parties that there would be no competition this academic year. Because of the urgency of the need to receive applications from worthy students, we request that an emergency clearance procedure for this application package be approved.

*Frequency:* Annually.

*Affected Public:* Individuals or households.

*Annual Reporting and Recordkeeping Hour Burden:*

*Responses:* 2,000.

*Burden Hours:* 10,000.

[FR Doc. 96–28612 Filed 11–6–96; 8:45 am]

BILLING CODE 4000–01–P

## Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before January 6, 1997.

**ADDRESSES:** Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 1, 1996.

Gloria Parker,

*Director, Information Resources Group.*

Office of Educational Research and Improvement

*Type of Review:* Revision.

*Title:* A Study of Charter Schools.

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

*Reporting Burden and Recordkeeping:*

*Responses:* 5,135.

*Burden Hours:* 3,799.

*Abstract:* This four-year study of charter schools will examine the impact of charter schools on student achievement, on education reform, and on an array of other issues. The study includes an annual survey of the universe of charter schools and intensive site visits at a sample of charter schools.

[FR Doc. 96–28613 Filed 11–6–96; 8:45 am]

BILLING CODE 4000–01–P

## Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before December 9, 1996.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process

would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 1, 1996.

Gloria Parker,

*Director, Information Resources Group.*

Office of Postsecondary Education

*Type of Review:* Extension.
*Title:* The State Student Incentive Grant (SSIG) Program.
*Frequency:* Annually.
*Affected Public:* State, local or Tribal Government, SEA's or LEA's.
*Annual Reporting and Recordkeeping Hour Burden:*
*Responses:* 57.
*Burden Hours:* 570.
*Abstract:* The SSIG Program uses matching Federal and State funds to provide a nationwide system of grants to assist postsecondary education students with substantial financial need. State agencies use this performance report to account for yearly program performance. The Department uses the information collected to assess the accomplishment of the program goals and objectives and to aid in program management and compliance assurance.

[FR Doc. 96–28614 Filed 11–6–96; 8:45 am]
BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

**[Docket Nos. EA–125, EA–130, EA–132]**

## Applications To Export Electric Energy to Mexico; Federal Energy Sales, Inc., Sonat Power Marketing, LP, and Coastal Electric Services Company

**AGENCY:** Office of Fossil Energy, DOE.

**AGENCY:** Notice of applications.

**SUMMARY:** Federal Energy Sales, Inc. (FES), Sonat Power Marketing, LP (Sonat), and Coastal Electric Services Company (Coastal) have submitted applications to export electric energy to Mexico pursuant to section 202(e) of the Federal Power Act. The applicants are marketers of electric energy. They do not own or control any electric generation or transmission facilities.

**DATES:** Comments, protests or requests to intervene must be submitted on or before December 9, 1996.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

The Office of Fossil Energy (FE) of the Department of Energy (DOE) has received applications from the following companies for authorization to export electric energy, as power marketers, to Mexico pursuant to section 202(e) of the FPA:

| Applicant | Application date | Docket No. |
|---|---|---|
| Federal Energy Sales. | 10/8/96 | EA–125 |
| Sonat Power Mktg | 10/18/96 | EA–130 |
| Coastal Electric Svs. | 10/21/96 | EA–132 |

These power marketing companies do not own or control any facilities for the generation or transmission of electricity, nor do they have franchised service areas. Rather, these power marketers are authorized by the Federal Energy Regulatory Commission (FERC) to engage in the sale of electricity at wholesale in interstate commerce at negotiated rates pursuant to filed rate schedules.

The electric energy these power marketers propose to transmit to Mexico will be purchased from electric utilities and other entities in the U.S. and transmitted to Mexico over one or more of the following international transmission lines for which Presidential permits (PP) have been previously issued:

| Owner | Location | Presidential voltage | Permit No. |
|---|---|---|---|
| San Diego Gas & Elect. | Miguel, CA | 230 kV | PP–68. |
| | Imperial Valley, CA | 230 kV | PP–79 |
| El Paso Electric | Diablo, NM | 115 kV | PP–92. |
| | Ascarate, TX | 115 kV | PP–48. |
| Central Power and Light | Brownsville, TX | 138 kV | PP–94. |
| Comision Federal de Electricidad | Eagle Pass, TX | 138 kV | PP–50. |
| | Laredo, TX | 138 kV | PP–57. |
| | Falcon Dam, TX | 138 kV | Not required. |

As noted above, these power marketers propose to export electricity to be transmitted to Mexico over lines owned and operated by the El Paso Electric Company (EPE) and permitted under Presidential Permits Nos. PP–48, as amended, and PP–92. On October 29, 1996, the Secretary of Energy signed Delegation Order No. 0204–163, which delegated and assigned to the FERC authority to carry out such functions vested in the Secretary to regulate access to, and the rates, terms and conditions for, transmission services over these facilities. This authority was delegated to FERC for the sole purpose of authorizing FERC to take any actions necessary to effectuate open access transmission over the United States portion of EPE's electric transmission lines connecting the Diablo and Ascarate substations in the United States with the Insurgentes and Riverena substations in Mexico. Notice and a copy of the Delegation Order were published in the Federal Register on November 1st at 61 FR 56525.

Procedural Matters

Any persons desiring to become parties to these proceedings or be heard by filing comments or protests to these applications should file petitions to intervene, comments or protests at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above.

Comments on FES's request to export to Mexico should be clearly marked with Docket EA–125. Additional copies are to be filed directly with: Douglas F. John, John, Hengerer & Esposito, 1200 17th Street, NW, Suite 600, Washington, D.C. 20036 FAX: 202–429–8805 and Scott S. Towner, Federal Energy Sales, Inc. 20525 Detroit Road, Suite 2 Rocky River, Ohio 44146 (Phone 216–333–7071) (FAX 216–333–7577).

Comments on Sonat's request to export to Mexico should be clearly marked with Docket No. EA–130. Additional copies are to be filed directly with: Linda K. Browning, Director-Legal & Regulatory Affairs, Sonat Power Marketing L.P., 1900 Fifth Avenue North, Birmingham, AL 35203–2563 (Phone 205–325–3851) (FAX 205–327–2413).

Comments on Coastal's request to export to Mexico should be clearly marked with Docket EA–132. Additional copies are to be filed directly with: James E. Miller, Counsel, Coastal Electric Services Company, Nine Greenway Plaza, Houston, Texas 77046 (Phone 713–877–7563) (FAX 713–877–6714).

A final decision will be made on these applications after the environmental impacts of the proposed actions have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on November 1, 1996.

Anthony J. Como,

*Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 96–28668 Filed 11–6–96; 8:45 am]

BILLING CODE 6450–01–P

**[Docket Nos. EA–126, EA–131, EA–133]**

## Applications to Export Electric Energy to Canada; Federal Energy Sales, Inc., Sonat Power Marketing, L.P., and Coastal Electric Services

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of applications.

**SUMMARY:** Federal Energy Sales, Inc. (FES), Sonat Power Marketing, LP (Sonat), and Coastal Electric Services Company (Coastal) have submitted applications to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act. The applicants are marketers of electric energy. They do not own or control any electric generation or transmission facilities.

**DATES:** Comments, protests or requests to intervene must be submitted on or before December 9, 1996.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

The Office of Fossil Energy (FE) of the Department of Energy (DOE) has received applications from the following companies for authorization to export electric energy, as power marketers, to pursuant to section 202(e) of the FPA:

| Applicant | Application date | Docket No. |
|---|---|---|
| Federal Energy Sales. | 10/8/96 | EA–126 |
| Sonat Power Mktg | 10/18/96 | EA–131 |
| Coastal Electric Svs | 10/21/96 | EA–133 |

These power marketing companies do not own or control any facilities for the generation or transmission of electricity, nor do they have franchised service areas. Rather, these power marketers are authorized by the Federal Energy Regulatory Commission (FERC) to engage in the sale of electricity at wholesale in interstate commerce at negotiated rates pursuant to filed rate schedules.

The electric energy these power marketers propose to transmit to Canada will be purchased from electric utilities and other entities in the U.S. and transmitted to Canada over one or more of the following international transmission lines for which Presidential permits (PP) have been previously issued:

| Owner | Location | Presidential voltage | Permit No. |
|---|---|---|---|
| Basin Electric | Tioga, ND | 230-kV | PP–64 |
| Bonneville Power Administration | Blaine, WA | 2–500-kV | PP–10 |
| | Nelway, WA | 230-kV | PP–36 |
| | Nelway, WA | 230-kV | PP–46 |
| Citizens Utilities | Derby Line, VT | 120-kV | PP–66 |
| Detroit Edison | St. Clair, MI | 345-kV | PP–38 |
| | Maryville, MI | 230-kV | PP–21 |
| | Detroit, MI | 230-kV | PP–21 |
| | St. Clair, MI | 345-kV | PP–58 |
| Eastern Maine Elect. Coop | Calais, ME | 69-kV | PP–32 |
| Joint Owners of Highgate Project | Highgate, VT | 345-kV [1] | PP–82 |
| Maine Electric Power Co | Houlton, ME | 345-kV | PP–43 |
| Maine Public Service Co | Limestone, ME | 69-kV | PP–12 |
| | Fort Fairfield, ME | 69-kV | PP–12 |
| | Aroostook County, ME | 138-kV | PP–29 |
| | Madawaska, ME | 2–69-kV | PP–29 |
| Minnesota Power and Light Co | International Falls, MN | 115-kV | PP–78 |
| Minnkota Power | Roseau County, MN | 230-kV | PP–61 |

| Owner | Location | Presidential voltage | Permit No. |
|---|---|---|---|
| New York Power Authority | Massena, NY | 765-kV | PP–56 |
| | Massena, NY | 2–230-kV | PP–25 |
| | Niagara Falls, NY | 2–345-kV | PP–74 |
| | Devils Hole, NY | 230-kV | PP–30 |
| Niagara Mohawk Power Corp | Devils Hole, NY | 230-kV | PP–31 |
| Northern States Power | Red River, ND | 230-kV | PP–45 |
| | Roseau County, MN | 500-kV | PP–63 |
| Vermont Electric Transmission Co | Norton, VT | ±450-kV DC | PP–76 |

[1] These facilities were constructed at 345-kV but operated at 120-kV.

Procedural Matters

Any persons desiring to become parties to these proceedings or be heard by filing comments or protests to these applications should file petitions to intervene, comments or protests at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above.

Comments on FES's request to export to Canada should be clearly marked with Docket EA–126. Additional copies are to be filed directly with: Douglas F. John, John, Hengerer & Esposito, 1200 17th Street, NW., Suite 600, Washington, DC 20036 FAX: 202–429–8805 AND Scott S. Towner, Federal Energy Sales, Inc. 20525 Detroit Road, Suite 2 Rocky River, Ohio 44146 (Phone 216–333–7071) (FAX 216–333–7577).

Comments on Sonat's request to export to Canada should be clearly marked with Docket No. EA–131. Additional copies are to be filed directly with: Linda K. Browning, Director-Legal and Regulatory Affairs, Sonat Power Marketing L.P., 1900 Fifth Avenue North, Birmingham, AL 35203–2563 (Phone 205–325–3851) (FAX 205–327–2413).

Comments on Coastal's request to export to Canada should be clearly marked with Docket EA–133. Additional copies are to be filed directly with: James E. Miller, Counsel, Coastal Electric Services Company, Nine Greenway Plaza, Houston, Texas 77046 (Phone 713–877–7563) (FAX 713–877–6714).

A final decision will be made on these applications after the environmental impacts of the proposed actions have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on November 1, 1996.

Anthony J. Como,

*Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 96–28669 Filed 11–6–96; 8:45 am]

BILLING CODE 6450–01–P

**[Docket Nos. EA–127 and EA–128]**

## Applications to Export Electricity; Southwestern Public Service Company & Quixx Corporation

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Southwestern Public Services Company (SPS) and Quixx Corporation (Quixx) have submitted applications to export electric energy to Mexico pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before December 9, 1996.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs. Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585 (FAX 202–586–0678).

**FOR FURTHER INFORMATION CONTACT:** William H. Freeman (Program Office) 202–586–9629 or Michael Skinker (Program Attorney) 202–586–6667.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)) .

On October 11, 1996, SPS and Quixx each filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Mexico pursuant to section 202(e) of the FPA. SPS is an electric utility with primary retail sales to customers in Texas and New Mexico and having its principal place of business in Amarillo, Texas. Quixx, a wholly-owned subsidiary of SPS, has no native load customers, but is involved in non-utility power generation projects, such as exempt wholesale generators and qualifying facilities. Quixx's principal place of business is also Amarillo, Texas.

The electric energy SPS and Quixx propose to sell to Mexico would be sold to Comision Federal de Electricidad (CFE ), the national electric utility of Mexico, and would be delivered to Mexico using El Paso Electric Company's (EPE) 115-kilovolt (kV) lines at Ascarate, Texas, and Diablo, New Mexico. The construction, operation, and maintenance of these international transmission lines was previously authorized by Presidential Permit Nos. PP–48, as amended, and PP–92, respectively.

On October 29, 1996, the Secretary of Energy signed Delegation Order No. 0204–163, which delegated and assigned to the Federal Energy Regulatory Commission (FERC) authority to carry out such functions vested in the Secretary to regulate access to, and the rates, terms and conditions for, transmission services over these EPE facilities. This authority was delegated to FERC for the sole purpose of authorizing FERC to take any actions necessary to effectuate open access transmission over the United States portion of EPE's electric transmission lines connecting the Diablo and Ascarate substations in the United States with the Insurgentes and Riverena substations in Mexico. Notice and a copy of the Delegation Order were published in the Federal Register on November 1, 1996, at 61 FR 56525.

Procedural Matters

Any persons desiring to become parties to these proceedings or be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the

FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Comments on the application by Quixx should be clearly marked with Docket No. EA–127. Comments on SPS's request to export to Mexico should be clearly marked with Docket No. EA–128. Additional copies are to be filed directly with: Michael E. Small, Wright & Talisman, P.C., 1200 G Street, N.W., Suite 600, Washington, D.C. 20005 and Louis Ridings, President, Quixx Corporation, 6th & Tyler, Suite 1510, P.O. Box 12033, Amarillo, Texas 79101.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on November 1, 1996.

Anthony J. Como,

*Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 96–28667 Filed 11–6–96; 8:45 am]

BILLING CODE 6450–01–P

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**[Docket No. EA–102–A]**

## Application for Supplemental Order; Enron Power Marketing, Inc.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Enron Power Marketing, Inc. (Enron) has submitted an application to supplement its Order in FE Docket EA–102 authorizing exports of electricity to Mexico. Specifically, Enron is seeking an order that will require El Paso Electric Company (EPE) to provide nondiscriminatory transmission access to Mexico using the two cross border transmission lines owned by EPE.

**DATES:** Comments, protests or requests to intervene must be submitted on or before December 9, 1996.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202–586-9624 or Michael Skinker (Program Attorney) 202–586–6667.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On February 6, 1996, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order EA–102 to EPMI authorizing it to export electric energy to Mexico pursuant to section 202(e) of the Federal Power Act (FPA). Among other things, Order EA–102 allowed EPMI to transmit the exported energy over the two 115-kV international transmission lines owned and operated by EPE. The construction and operation of these lines was previously authorized by Presidential Permits PP–48–3 and PP–92, issued by the DOE on December 13, 1990, and April 16, 1992, respectively. The authority contained in Order EA–102 was conditioned on EPMI obtaining the necessary transmission service to wheel the exported energy from the source(s) to the U.S. border with Mexico. However, Order EA–102 did not require any transmission system to provide service.

EPE presently has a contract for the sale of electric power to the Comision Federal de Electricidad (CFE, the national electric utility of Mexico). That contract expires in December 1996 and CFE has solicited bids from EPE and other entities for the supply of firm power starting in 1997. In order to complete a proposal in response to CFE's solicitation, on July 18, 1996, EPMI requested that EPE provide firm point-to-point transmission service under EPE's open access tariff filed with the Federal Energy Regulatory Commission (FERC) pursuant to Order 888. On August 30, 1996, EPE denied EPMI's request for several reasons.

On September 13, 1996, EPMI filed a complaint with the FERC under section 206 of the FPA alleging that EPE's denial of transmission service was unjust, unreasonable, unduly discriminatory, anticompetitive, and in violation of EPE's open-access transmission tariff on file with the FERC. On October 4, 1996, the FERC granted EPMI's requested relief and ordered EPE to provide transmission service (under its FERC-filed open-access tariff) from designated points of receipt between EPE and other U.S. utilities to EPE's Diablo and Ascarate substations in the United States. However, the FERC determined that it did not have jurisdiction to order EPE to provide comparable transmission service over the U.S. portion of EPE's transmission lines connecting the Diablo and Ascarate substations with CFE's Insurgentes and Riverena substations in Mexico. Accordingly, on October 7, 1996, EPMI filed an application requesting the DOE to order EPE to provide nondiscriminatory transmission access over EPE's two 115-kV international transmission lines extending from EPE's Diablo and Ascarate substations. EPMI requested that this be accomplished by: (1) Supplementing Order EA–102; (2) amending EPE's electricity export authorization contained in Order EA–48–I; and (3) amending Presidential Permits PP–48–3 and PP–92.

On October 29, 1996, the Secretary of Energy signed Delegation Order No. 0204–163, which delegated and assigned to the FERC authority to carry out such functions vested in the Secretary to regulate access to, and the rates, terms and conditions for, transmission services over these EPE facilities. This authority was delegated to FERC for the sole purpose of authorizing FERC to take any actions necessary to effectuate open access transmission over the United States portion of EPE's electric transmission lines connecting the Diablo and Ascarate substations in the United States with the Insurgentes and Riverena substations in Mexico. Notice and a copy of the Delegation Order were published in the Federal Register on November 1, 1996 at 61 FR 56525.

**PROCEDURAL MATTERS:** Any person desiring to be heard or to protest this application should file comments, protests or petitions to intervene at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 C.F.R. 385.211, 385.214). Fifteen copies of such comments, protests or petitions to intervene should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with: Richard S. Shapiro, Enron Power Marketing, Inc., 1400 Smith Street (77002), Post Office Box 1188, Houston, TX 77251–1188 (FAX: 713–646–8160) AND Joseph R. Hartsoe, Enron Washington, Inc., 750 17th Street, NW, Suite 400, Washington, DC 20006–4607 (FAX 202–466–3450).

Pursuant to 18 C.F.R. 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 C.F.R.

385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

On the date this notice was issued DOE had already received interventions in this docket from NorAm Energy Services, Inc., Destec Power Services, Inc., Southwestern Public Service Company, Detroit Edison Company, and the Public Utility Commission of Texas. These entities are accepted as parties to this proceeding and need not reapply.

A final decision will be made on this application after the environmental impacts of the proposed action has been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on November 1, 1996.

Anthony J. Como,

*Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 96–28670 Filed 11–6–96; 8:45 am]

BILLING CODE 6450–01–P

## Federal Energy Regulatory Commission

**[Docket No. CP97–58–000]**

### Columbia Gas Transmission Corporation, Notice of Application

November 1, 1996.

Take notice that on October 21, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, Charleston, West Virginia 25325–1273, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations thereunder for an order granting permission and approval to abandon by transfer certain natural gas facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to abandon fifty-three (53) meters used to measure receipts of volumes from independent producers located in Kentucky, Ohio and West Virginia. On July 31, 1991, Columbia filed for protection under Chapter 11 of the United States Bankruptcy Code. In the process of liquidating claims, Columbia entered into settlement agreements with individual producers which involved, among other things, Columbia's agreement to transfer to the settling producers certain receipt meters. These meters were no longer needed by Columbia to support gas purchase activity but were of interest to the producers who would continue to introduce gas into Columbia's system for transportation.

Columbia states that the meters were originally functionalized as gathering facilities, however, Columbia received Section 7(c) authorization for those meters in its proceeding to refunctionalize to transmission plant at Docket No. CP95–657–000.[1] The estimated net debit to accumulated provision for depreciation of the facilities to be abandoned is $313,384.

Any person desiring to be heard or to make any protest with reference to said application should on or before Nov. 22, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–28597 Filed 11–6–96; 8:45 am]

BILLING CODE 6717–01–M

[1] See, 73 FERC ¶ 61,264 (1995).

**[Docket No. CP97–56–000]**

### Natural Gas Pipeline Company of America; Notice of Application for Abandonment

November 1, 1996.

Take notice that on October 21, 1996, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP97–56–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) requesting permission and approval to abandon a transportation service performed by Natural under its Rate Schedule X–84 for Koch Gateway Pipeline Company (Koch Gateway) authorized in Docket No. CP76–392, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that in Docket No. CP76–392, it was authorized, among other things, to provide an interruptible transportation service for Koch Gateway, formerly known as United Gas Pipe Line Company, pursuant to a gas transportation agreement (Agreement) between Natural and Koch Gateway dated May 24, 1976. Koch Gateway notified Natural by a letter dated June 26, 1996, that the transportation service provided under the Agreement and Natural's Rate Schedule X–84 is no longer required. Natural further states that this Agreement carries no imbalance and has not been used since March 1987. Therefore, Natural requests authority to abandon its transportation service for Koch Gateway performed under the Agreement and Natural's Rate Schedule X–84 authorized in Docket No. CP76–392.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 22, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of

the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–28599 Filed 11–6–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. GP97–1–000]**

## Rocky Mountain Natural Gas Company; Notice for Declaratory Order

November 1, 1996.

Take notice that on October 25, 1996, pursuant to Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR § 385.207(a)(2), Rocky Mountain Natural Gas Company (Rocky Mountain) filed a petition for a declaratory order resolving certain issues arising under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. §§ 3301 *et seq.*, the Natural Gas Wellhead Decontrol Act of 1989, Public Law No. 101–60, 103 Stat. 157 (1989) and the Natural Gas Act, 15 U.S.C. §§ 717 *et seq.* (Gas Act).

Rocky Mountain states that the issues are rooted in a protracted dispute between Rocky Mountain and Jack J. Grynberg (Grynberg), a producer of natural gas in Colorado. Rocky Mountain states that it has filed this petition in an effort to resolve the dispute with Grynberg.

Rocky Mountain states that the petition for declaratory order raises three main issues: (1) Whether a contract agreement to pay the NGPA section 102 price must be both voluntary and executed after the passage of the Decontrol Act to trigger decontrol under section 2(a) of Decontrol Act, and whether a contract executed pursuant to an order of the Colorado Court of Appeals interpreting a 1984 settlement between Rocky Mountain and Grynberg would fulfill these criteria; (2) whether, if such a contract would be operative to trigger decontrol and qualify the gas produced from the subject wells for the NGPA section 102 price, the wells may now qualify for a still higher NGPA section 107 price, even though qualification procedures for section 107 well category determinations have been repealed; (3) whether the Commission's April 2, 1996 order granting retroactive abandonment to wells that had been committed to interstate commerce (and eligible for only NGPA section 104 prices) requires Rocky Mountain to pay the NGPA section 105 intrastate price only from date of the order, or retroactively; and if retroactively, when does the section 105 obligation arise?

Rocky Mountain requests that the Commission issue a declaratory order holding that (1) early decontrol under Section 2(a) of the Decontrol Act is not triggered by an involuntary contract; (2) Grynberg is not entitled to section 107 pricing for any of his wells; and (3) Rocky Mountain was not obligated to pay Grynberg section 105 prices until the Commission issued its most recent orders on remand.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in accordance with Section 385.211 and 385.214 of the Commission's Regulations. All such motions or protests must be filed on or before November 29, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–28602 Filed 11–6–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. CP97–75–000]**

## Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

November 1, 1996.

Take notice that on October 28, 1996, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP97–75–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to establish a delivery point for Reynolds Metals Company (Reynolds) under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to construct a new delivery point on its system at approximate milepost 5A–202+6 in San Patricio County, Texas for the delivery of up to 27,000 dekatherms per day of natural gas to Reynolds. The cost of the new delivery point is estimated to be $240,000.

Tennessee states that in order to establish this delivery point, Tennessee proposes to construct, own, operate and maintain the necessary 6-inch hot tap, approximately 100 feet of 6-inch interconnect piping, measurement, including electronic gas measurement equipment, communications equipment, upstream separation facilities, valving and appurtenant facilities. Tennessee states that the hot tap and a portion of the interconnecting pipe will be located on Tennessee's existing right-of-way, and that the meter facilities, the remaining portion of the interconnecting pipe, communications, and the separator will be located on a site adjacent to Tennessee's existing right-of-way. Tennessee states that Reynolds will provide the adjacent meter station site, site improvements, access road and electrical service. Tennessee states that Reynolds will install, own and maintain the flow control equipment and pipeline between the meter station and its plant, and that Tennessee will operate the flow control equipment.

Tennessee states that the total quantities to be delivered for Reynolds will not exceed the total quantities authorized. Tennessee asserts that its tariff does not prohibit the addition of new delivery points, and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery meter without detriment or

disadvantage to any of Tennessee's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–28601 Filed 11–7–96; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP97-67-000]**

## Trunkline LNG Company; Notice of Application

November 1, 1996.

Take notice that on October 25, 1996, Trunkline LNG Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed an application with the Commission on Docket No. CP97-67-000 pursuant to Section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the purchase of a leased 1,750 horsepower compressor unit, all as more fully set forth in the application which is open to the public for inspection.

Specifically, Trunkline proposes to purchase an electric-driven 1,750 horsepower compressor unit, currently leased by Trunkline, which was acquired as a replacement for a gas-driven 1,000 horsepower compressor unit it had leased pursuant to authority granted by the Commission in its order dated November 14, 1989 in Docket Nos. CP87-418-000 and CP89-1499-000.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 22, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.211) and the Regulations under the National Gas Act (18 CFR 157.10). All protests with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing in required, further notice or such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–28600 Filed 11–6–96; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. EG97–5–000, et al.]**

## North American Energy Services Company, et al. Electric Rate and Corporate Regulation Filings

October 31, 1996.

Take notice that the following filings have been made with the Commission:

1. North American Energy Services Company

[Docket No. EG97–5–000]

Take notice that on October 21, 1996, North American Energy Services Company, a Washington corporation, 999 Lake Drive, Suite 310, Issaquah, Washington 98027 (the ''Applicant''), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

The Applicant will be engaged in managing daily operations and maintenance of eligible facilities to be constructed in Argentina: the 77 MW Central Termica Patagonia power plant located near Comodoro Rivadavia, Argentina, consisting of two General Electric Frame-6 simple cycle gas turbine-generator sets and associated equipment and real estate. The turbines are natural gas-fired only.

*Comment date:* November 22, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application

2. Jorf Lasfar Energy Company SCA

[Docket No. EG97–6–000]

On October 23, 1996, Jorf Lasfar Energy Company SCA (''Applicant''), with its principal office at c/o CMS Generation Co., Fairlane Plaza South, 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a company in the process of formation under the laws of Morocco, and will operate two existing 330 MW coal-fired units and construct and operate two additional 348 MW units. Electric energy produced by the Facility will be sold at wholesale to the state-owned Office National de l'Electricite. In no event will any electric energy be sold to consumers in the United States.

*Comment date:* November 22, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. CMS Ensenada S.A.

[Docket No. EG97–7–000]

On October 29, 1996, CMS Ensenada S.A., Alsina 495, piso 5 (1087), Capital Federal, Buenos Aires, Argentina, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

CMS Ensenada S.A. is a subsidiary of CMS Generation Co., a Michigan corporation, which is a wholly-owned indirect subsidiary of CMS Energy Corporation, also a Michigan corporation. CMS Ensenada S.A. is currently constructing a 128 megawatt natural gas-fired electric co-generation facility on the grounds of a refinery owned by YPF S.A. in Ensenada, province of Buenos Aires, Argentina.

*Comment date:* November 22, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration

of comments to those that concern the adequacy or accuracy of the application.

4. P.H. Don Pedro, S.A.

[Docket No. EG97–8–000]

On October 29, 1996, P.H. Don Pedro, S.A., a corporation (sociedad anonima) organized under the laws of Costa Rica (''Applicant''), with its principal place of business at Santo Domingo de Heredia del Hotel Bouganville 200 Mts. al Este de la Iglesia Católica (Primera Entrada Portón con Ruedas de Artilleria) Heredia, Costa Rica, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant intends to own and operate an approximately 14 megawatt (net), hydroelectric power production facility located in the District of Sarapiqui, Canton of Alajuela, Province of Alajuela, Costa Rica.

*Comment date:* November 22, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Wholesale Power Services, Inc. Koch Power Services, Inc. Proven Alternatives, Amoco Energy Trading Corporation, Entergy Power Marketing Corp., Questar Energy Trading Company, SCANA Energy Marketing, Inc.

[Docket Nos. ER93–730–004, ER95–218–007, ER95–473–006, ER95–1359–005, ER95–1615–004, ER96–404–003, ER96–1086–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 23, 1996, Wholesale Power Services, Inc. filed certain information as required by the Commission's September 22, 1995, order in Docket No. ER93–730–000.

On October 29, 1996, Koch Power Services, Inc. filed certain information as required by the Commission's January 4, 1995, order in Docket No. ER95–218–000.

On October 28, 1996, Proven Alternatives filed certain information as required by the Commission's March 29, 1995, order in Docket No. ER95–473–000.

On October 29, 1996, Amoco Energy Trading Corporation filed certain information as required by the Commission's November 29, 1995, order in Docket No. ER95–1359–000.

On October 28, 1996, Entergy Power Marketing Corp. filed certain information as required by the Commission's February 14, 1996, order in Docket No. ER95–1615–000.

On October 29, 1996, SCANA Energy Marketing, Inc. filed certain information as required by the Commission's May 13, 1996, order in Docket No. ER96–1086–000.

On October 23, 1996, Questar Energy Trading filed certain information as required by the Commission's January 29, 1996, order in Docket No. ER96–404–000.

6. InterCoast Power Marketing Company, Rainbow Energy Marketing Corporation, Electrade Corporation, JPower, Vantus Power Services, Bonneville Fuels Management Corp., Power Providers, Inc.

[Docket Nos. ER94–6–005, ER94–1061–010, ER94–1478–009, ER95–1421–006, ER95–1614–007, ER96–659–003, ER96–2303–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 28, 1996, InterCoast Power Marketing Company filed certain information as required by the Commission's June 10, 1994, order in Docket No. ER94–6–000.

On October 28, 1996, Rainbow Energy Marketing Corporation filed certain information as required by the Commission's June 10, 1994, order in Docket No. ER94–1061–000.

On October 28, 1996, Electrade Corporation filed certain information as required by the Commission's August 25, 1994, order in Docket No. ER94–1478–000.

On October 24, 1996, JPower filed certain information as required by the Commission's August 25, 1995, order in Docket No. ER95–1421–000.

On October 25, 1996, Vantus Power Services filed certain information as required by the Commission's October 20, 1995, order in Docket No. ER95–1614–000.

On October 25, 1996, Bonneville Fuels Management Corp. filed certain information as required by the Commission's February 28, 1996, order in Docket No. ER96–659–000.

On October 28, 1996, Power Providers, Inc. filed certain information as required by the Commission's September 3, 1996, order in Docket No. ER96–2303–000.

7. Vitol Gas and Electric, L.L.C. NorAm Energy Services, Inc. Phibro Inc. El Paso Energy Marketing Company Heath Petra Resources, Inc. LISCO, Inc. Mid-American Power, LLC

[Docket Nos. ER94–155–015, ER94–1247–011, ER95–430–007, ER96–118–005, ER96–381–004, ER96–1406–001, ER96–1858–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 28, 1996, Vitol Gas and Electric, L.L.C. filed certain information as required by the Commission's January 14, 1994, order in Docket No. ER94–155–000.

On October 25, 1996, NorAm Energy Services, Inc. filed certain information as required by the Commission's July 25, 1994, order in Docket No. ER94–1247–000.

On October 24, 1996, Phibro Inc. filed certain information as required by the Commission's June 9, 1995, order in Docket No. ER95–430–000.

On October 25, 1996, El Paso Energy Marketing Company filed certain information as required by the Commission's November 28, 1995, order in Docket No. ER96–118–000.

On October 25, 1996, Heath Petra Resources, Inc. filed certain information as required by the Commission's December 20, 1995, order in Docket No. ER96–381–000.

On October 21, 1996, LISCO, Inc. filed certain information as required by the Commission's June 10, 1996, order in Docket No. ER96–1406–000.

On October 25, 1996, Mid-American Power, LLC filed certain information as required by the Commission's June 16, 1996, order in Docket No. ER96–1858–000.

8. Tenaska Power Services Company Energy Source Power, Inc. Southern Energy Marketing, Inc. J Power J.D. Loock & Associates Energyonline, Inc. Paragon Gas Marketing

[Docket Nos. ER94–389–009, ER94–1168–010, ER95–976–006, ER95–1421–005, ER95–1826–003, ER96–138–002, ER96–380–004 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 25, 1996, Tenaska Power Services Company filed certain information as required by the Commission's May 26, 1994, order in Docket No. ER94–389–000.

On October 16, 1996, Energy Source Power, Inc. filed certain information as required by the Commission's July 8, 1994, order in Docket No. ER94–1168–000.

On October 25, 1996, Southern Energy Marketing, Inc. filed certain information as required by the Commission's September 29, 1995 order in Docket No. ER95–976–000.

On October 21, 1996, JPower filed certain information as required by the Commission's August 25, 1995 order in Docket No. ER95–1421–000.

On October 21, 1996, J.D. Loock & Associates filed certain information as required by the Commission's October 27, 1995 order in Docket No. ER95–1826–000.

On October 21, 1996, Energyonline, Inc. filed certain information as required by the Commission's January 5, 1996 order in Docket No. ER96–138–000.

On October 25, 1996, Paragon Gas Marketing filed certain information as required by the Commission's December 20, 1995 order in Docket No. ER96–380–000.

9. Florida Power & Light Company

[Docket Nos. ER96–495–001 and ER96–1001–001]

Take notice that on October 23, 1996, Florida Power & Light Company (FPL), filed a refund report in the above-captioned dockets.

*Comment date:* November 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Company Services, Inc.

[Docket No. ER96–2573–002]

Take notice that on October 25, 1996, Southern Company Services, Inc. acting on behalf of Georgia Power Company has filed a Service Agreement by and among itself, as agent for Georgia Power company and the City of Hampton, Georgia pursuant to which Georgia Power will make wholesale power sales to the City of Hampton for a term in excess of one (1) year. This filing is submitted in compliance with the letter order issued in this proceeding by the Federal Energy Regulatory Commission on September 25, 1996. *Southern Company Services, Inc.*, 76 FERC ¶ 61,321 (1996).

*Comment date:* November 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Central Louisiana Electric Company

[Docket No. ER96–2677–001]

Take notice that on October 21, 1996, Central Louisiana Electric Company tendered for filing its compliance filing in the above-referenced docket.

*Comment date:* November 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER96–2883–000]

Take notice that on September 20, 1996, PECO Energy Company filed a request to withdraw the filing of a letter dated August 2, 1996 in this docket.

*Comment date:* November 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER97–141–000]

Take notice that on October 21, 1996, Louisville Gas and Electric Company (LG&E) tendered for filing a correction to its initial filing of October 8, 1996, in the above-cited docket.

*Comment date:* November 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–28643 Filed 11–06–96; 8:45 am]

BILLING CODE 6717–01–P

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**[Project No. 11566–001–ME]**

## Consolidated Hydro Maine, Inc.; Notice of Site Visit and Scoping Meeting Pursuant to the National Environmental Policy Act of 1969

November 1, 1996.

On August 19, 1996, the Federal Energy Regulatory Commission (Commission) issued a letter accepting the Consolidated Hydro Maine, Inc.'s application for initial license for the Damariscotta Mills Hydro Project, located on the Damariscotta River in Lincoln County, Maine. Initially, the site visit and scoping meetings were scheduled for October 22 and 23. However, these meetings were cancelled due to inclement weather.

The purpose of this notice is to reschedule the site visit and scoping meetings and to: (1) Advise all parties as to the proposed scope of the staff's environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (2) advise all parties of their opportunity for comment.

Scoping Process

The Commission's scoping objectives are to:

- identify significant environmental issues;
- determine the depth of analysis appropriate to each issue;
- identify the resource issues not requiring detailed analysis; and
- identify reasonable project alternatives.

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be addressed in the environmental document to be prepared pursuant to the national Environmental Policy Act of 1969 (NEPA). The document entitled ''Scoping Document I'' (SDI) will be circulated shortly to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, nongovernmental organizations (NGO's), and other interested parties to effectively participate in and contribute to the scoping process. SDI provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of a cumulative effects analysis, and a list of preliminary issues identified by staff.

Project Site Visit

The applicant and the Commission staff will conduct a site visit of the Damariscotta Mills Hydro Project on November 18, 1996, at 1:00 p.m. They will meet at the project powerhouse, located on Rt. 215 in Newcastle. All interested individuals, NGO's and agencies are invited to attend. All participants are responsible for their own transportation and should bring a hard hat. For more details, interested parties should contact Kevin Webb, the applicant contact, at (508) 681–1900 (ext. 1225), prior to the site visit date.

Scoping Meetings

The Commission staff will conduct two scoping meetings. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of

environmental issues that should be analyzed in the NEPA document.

The agency scoping meeting will be held on November 18, 1996, from 9:00 a.m. to 12:00 p.m, at the Maine Dept. of Environmental Protection, Room LW–4, Ray Building-AMHI Complex, Hospital Street (Rt. 9), Augusta, ME 04333. For more details, interested parties should contact Dana Murch, Maine DEP, at (207) 287–3901, prior to the meeting date.

The public scoping meeting will be held on November 18, 1996, from 6:00 p.m. to 9:00 p.m. at the Central High School, 194 Center St., Nobleboro, Maine 04555.

The Commission will decide, based on the application, and agency and public comments at the scoping session, whether licensing the Damariscotta Mills Project constitutes a major federal action significantly affecting the quality of the human environment. Irrespective of the Commission's determination to prepare an environmental assessment or an environmental impact statement for the Damariscotta Mills Project, the Commission staff will not hold additional scoping meetings other than those scheduled, as listed above.

Objectives

At the scoping meetings, the Commission staff will: (1) Summarize the environmental issues tentatively identified for analysis in the NEPA document; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the NEPA document. Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed.

Meeting Procedures

The meetings will be recorded by a stenographer and become a part of the formal record of the Commission proceeding on the Damariscotta Mills Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer us verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least 5 minutes to present their views.

All those attending the meeting are urged to refrain from making any communications concerning the merits of the application to any member of the Commission staff outside of the established process for developing the record as stated in the record of the proceeding.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the public record no later than December 20, 1996.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h). In addition, commenters *may* submit a copy of their comments on a 3½-inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version that it was generated (i.e., MS Word, WordPerfect 5.1/5.2, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should clearly show the following captions on the first page: Damariscotta Mills Hydro Project, FERC No. 11566.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or interceders (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

The Commission staff will consider all written comments and may issue a Scoping Document II (SDII). SDII will include a revised list of issues, based on the scoping sessions.

For further information regarding the scoping process, please contact Rich Takacs, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 888 First Street, NE, Washington, DC, 20426 at (202) 219–2840, or Ed Lee at (202) 219–2809.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–28605 Filed 11–6–96; 8:45 am]

BILLING CODE 6717–01–M

**[Project No. 11472–000–ME]**

## Consolidated Hydro Maine, Inc.; Notice of Availability of Final Environmental Assessment

November 1, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for license for the Burnham Hydroelectric Project, located in Somerset and Waldo Counties, Maine, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the existing unlicensed project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–28604 Filed 11–6–96; 8:45 am]

BILLING CODE 6717–01–M

**[Project No. 1962–000–CA]**

## Pacific Gas and Electric Company; Notice of Availability of Draft Environmental Assessment

November 1, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Rock Creek-Cresta Hydroelectric Project, located on the North Fork Feather River in Northern California, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff analyzed the potential environmental impacts of relicensing the existing project and concluded that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference and Files

Maintenance Branch of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix ''Rock Creek-Cresta Hydroelectric Project, No. 1962–000'' to all comments. For further information, please contact Jim Haimes at (202) 219–2780.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–28603 Filed 11–6–96; 8:45 am]

**BILLING CODE 6717–01–M**

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**[Docket No. CP96–655–000]**

## Destin Pipeline Company Inc.; Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Destin Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

November 1, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Destin Pipeline Project,[1] This EIS will be used by the Commission in its decision-making process to determine whether to approve the project.

We are asking a number of Federal Agencies to indicate whether they wish to cooperate with us in the preparation of the EIS. These agencies are listed in appendix 1 and may choose to participate once they have evaluated the proposal relative to their agencies' responsibilities.[2] To date, the U.S. Forest Service, DeSoto National Forest Chickasawhay Ranger District has requested cooperating agency status.

### Summary of the Proposed Project

Destin Pipeline Company Inc. (Destin) wants to build new natural gas pipeline and compression facilities in the Gulf of Mexico and southeastern Mississippi to transport 1 billion cubic feet per day of natural gas to downstream interconnections in Mississippi. Destin requests Commission authorization, in Docket No. CP96–655–000, to construct and operate the following facilities:

- 72.8 miles of 36-inch-diameter pipeline in the Gulf of Mexico extending from Main Pass Block 248 to a point of landfall near the city of Pascagoula in Jackson County, Mississippi;
- 116.8 miles of 36-inch-diameter pipeline extending northward through Jackson, George, Greene, Wayne, and Clark Counties, Mississippi to interconnections with the existing pipeline systems of Florida Gas Transmission Company (Florida Gas) and Transcontinental Pipe Line Corporation (Transco) near Shubuta, Mississippi;
- 17 miles of 30-inch-diameter pipeline within Clarke County from the interconnection with Transco to Southern Natural Gas Company's (Southern) existing Enterprise Compressor Station near Enterprise, Mississippi;
- 2.4 miles of 16-inch-diameter pipeline loop in Clarke County, Mississippi extending westward from Southern's Enterprise Compressor Station to an interconnection with Tennessee Gas Pipeline Company (Tennessee);
- One new 14,100-horsepower (hp) compressor station near the coastline in Jackson County, Mississippi;
- One new 11,600-hp compressor station in Greene County, Mississippi;
- Five new meter stations, one each in George and Attala Counties and three in Clarke County, Mississippi; and
- Two new offshore platforms in the U.S. territorial waters of the Gulf of Mexico.

The general location of the project facilities is shown in appendix 2. If you are interested in viewing detailed maps of a specific portion of the Destin Pipeline Project, please attend one of the public scoping meetings identified in this notice, or contact the EIS project manager at the phone number or address listed at the end of this notice.

### Land Requirements for Construction

Based on information supplied by Destin, over 50 percent of the proposed onshore pipeline would parallel existing road, pipeline, or powerline rights-of-way. Following construction, about 640 acres would be maintained as new right-of-way. Another 858 acres of temporarily disturbed land would be restored and allowed to revert entirely to its former use.

Building the Destin Pipeline Project would require onshore construction rights-of-way ranging from 90 to 110 feet wide. Following construction, a 40-foot-wide permanent right-of-way would be retained where the pipeline would be adjacent to existing utility rights-of-way and a 50-foot-wide permanent right-of-way would be retained in all other areas. Additional temporary work areas would be required on each side of road, railroad, river, and stream crossings. The two new compressor stations would each require about 2.8 acres of land. Each of the five new meter stations would require about one acre of land.

### The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues under each topic that we think deserve attention based on a preliminary review of each topic that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by the applicant. These issues are listed below. This is a preliminary list of issues and may be changed based on your comments and our analysis.

- Geology and Soils
  - —Seismology and areas susceptible to landslide.
  - —Prime farmland soils.
  - —Erosion control and right-of-way restoration.
- Water Resources
  - —Effect of construction on areas with shallow groundwater.
  - —Effect of construction on crossings of perennial waterbodies including 3 ponds, the Chickasawhay River, and 2 crossings of the Escatawpa River.
  - —Impact on wetland hydrology.
  - —Consistency with Mississippi

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[1] Destin Pipeline Company Inc.'s application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Coastal Zone Management Program.

- Biological Resources
  - —Short- and long-term effects of right-of-way clearing and maintenance on wetlands, forests, and riparian areas.
  - —Effects of habitat alteration
  - —Effect of construction on tidal salt marshes, Bangs Lake oyster reefs, and on potential spawning areas of the gulf sturgeon in the lower Chickasawhay River.
  - —Effect on freshwater and estuarine fisheries habitats and Gulf of Mexico commercial fisheries.
  - —Project impact on threatened and endangered species such as the gopher tortoise and the redcockaded woodpecker.
- Cultural Resources
  - —Effect on historic and prehistoric sites.
  - —Native American concerns.
- Land Use
  - —Impact on residences recreation areas.
  - —Consistency with local land use plans and zoning.
  - —Public lands including the DeSoto National Forest, Chickasawhay State Wildlife Management Area, Bangs Lake Coastal Reserve, and Gulf Islands National Seashore.
- Air Quality and Noise
  - —Effect on local air quality and noise environment as a result of construction.
  - —Effect on local air quality and noise environment as a result of operation of the compressor stations.
- Reliability and Safety
  - —Assessment of hazards associated with natural gas pipelines.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, affected landowners and other interested individuals, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be alloted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received and will be used by the Commission in its decision-making process to determine whether to approve the project.

Public Participation and Scoping Meetings

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to insure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426;
- Reference Docket No. CP96–655–000;
- Send a *copy* of your letter to: Mr. Michael Boyle, EIS Project Manager, Federal Energy Regulatory Commission, 888 First Street, NE, Room 72–59, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before December 2, 1996.

In addition to asking for written comments, we invite you to attend the public scoping meetings the FERC will conduct. The locations and times for these meetings are listed on the next page. Requests to hold additional public scoping meetings will be considered.

The public meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. Those wanting to speak at the meetings can call the EIS Project Manager to pre-register their names on the speaker list. Those people on the speaker list prior to the date of the meeting will be allowed to speak first. A second speaker list will be developed at each meeting. Priority will be given to people representing groups. A transcript of each meeting will be made so that your comments will be accurately recorded.

The public scoping meetings will be held at the following times and locations:

Pascagoula, Mississippi; November 13, 1996, 7:00 p.m., LaFont Inn, Highway 90 East, (602) 762-7111.

Waynesboro, Mississippi; November 14, 1996, 7:00 p.m., Waynesboro City Auditorium, 1008 Benton Street, (601) 735–3078.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all potential right-of-way grantors. As details of the project become established, representatives of Destin may also separately contact landowners, communities, and public agencies concerning project matters, including acquisition of permits and rights-of-way.

All commentors will be retained on our mailing list. If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EIS, please return the Information Request (appendix 4). If you do not send comments or return the Information Request, you will be taken off the mailing list.

Additional information on the proposed project is available from Mr. Michael Boyle, EIS Project Manager, at (202) 208–0839.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–28598 Filed 11–6–96; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5649–1]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Conflict of Interest

**AGENCY:** Environmental Protection Agency (EPA)

**ACTION:** Notice

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Conflict of Interest, EPA ICR No. 1550.04; OMB Control No. 2030–0023; expiration date 3/31/97. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before January 6, 1997.

**ADDRESSES:** Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street. S.W., Washington D.C. 20460, Attention: Edward N. Chambers.

**FOR FURTHER INFORMATION CONTACT:** Edward N. Chambers. (202) 260–6028 / FAX: (202) 260–1203 / CHAMBERS.ED@EPAMAIL.EPA.GOV

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are EPA contractors.

*Title:* Conflict of Interest (OMB Control No. 2030–0023; EPA ICR No. 1550.04) expiring 3/31/97.

*Abstract:* Contractors must disclose to EPA contracting offices all actual or potential conflicts of interest, and certify to this on either a work assignment or an annual basis. The information will be used by the Agency to mitigate or neutralize all conflicts. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments:

(i) To evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) To evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) To enhance the quality, utility, and clarity of the information to be collected; and

(iv) To minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

*Burden Statement:* The estimated annual public reporting and recordkeeping burden for this collection is 207,450 hours. This represents an average of 1,383 hours each for an estimated 150 contractors. The total number of responses is estimated at 10,200 (68 responses per contractor × 150 contractors). The average burden per response is estimated at 20.33 hours (1,383 hours / 68 responses). The annual cost of this collection is estimated at $9,986,705.50. This represents an average cost of $66,131.42 each for the estimated 150 contractors. The average cost per response is estimated at $972.52 ($66,131.42 / 68 responses).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to adjust the existing methods to comply with any previously applicable instructions and requirements; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

Dated: November 1, 1996.

Edward J. Murphy,

*Chief, Procurement Policy Branch.*

[FR Doc. 96–28658 Filed 11–6–96; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## Environmental Protection Agency

## Coastal Nonpoint Pollution Control Program: Proposed Findings Documents, Environmental Assessments, and Findings of No Significant Impact

**AGENCY:** National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the U.S. Environmental Protection Agency.

**ACTION:** Notice of Availability of Proposed Findings Documents, Environmental Assessments, and Findings of No Significant Impact on Approval of Coastal Nonpoint Pollution Control Programs for the States of Michigan and Wisconsin.

**SUMMARY:** Notice is hereby given of the availability of the Proposed Findings Documents, Environmental Assessments (EA's), and Findings of No Significant Impact for the states of Michigan and Wisconsin. Coastal states were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995. The Findings documents were prepared by NOAA and EPA to provide the rationale for the agencies' decision to approve each state and territory coastal nonpoint pollution control program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. 1455b, requires states and territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint pollution control programs. The EA's were prepared by NOAA, pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, to assess the environmental impacts associated with the approval of the coastal nonpoint pollution control programs submitted to NOAA and EPA by the states of Michigan and Wisconsin.

NOAA and EPA have proposed to approve, with conditions, the coastal nonpoint pollution control programs submitted by the states of Michigan and Wisconsin. The requirements of 40 CFR parts 1500–1508 (Council on Environmental Quality (CEQ) regulations to implement the National Environmental Policy Act) apply to the preparation of the Environmental Assessments. Specifically, 40 CFR 1506.6 requires agencies to provide public notice of the availability of environmental documents. This notice is part of NOAA's action to comply with this requirement.

Copies of the Proposed Findings Documents, Environmental Assessments, and Findings of No Significant Impact may be obtained upon request from: Joseph P. Flanagan, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, tel. (301) 713–3121, ext. 201.

**DATES:** Individuals or organizations wishing to submit comments on the

proposed Findings or Environmental Assessments should do so by December 9, 1996.

**ADDRESSES:** Comments should be made to: Joseph A. Uravitch, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. (301) 713–3155, ext. 195.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: October 31, 1996.

W. Stanley Wilson,

*Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.*

Robert H. Wayland III,

*Director, Office of Wetlands, Oceans and Watersheds, Environmental Protection Agency.*

[FR Doc. 96–28584 Filed 11–6–96; 8:45 am]

**BILLING CODE 3510–12–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5649–2]**

### Proposed Settlement Pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed administrative settlement and opportunity for public comment.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), the Environmental Protection Agency, Region II, announces a proposed administrative *de minimis* settlement pursuant to Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Hexagon Laboratories Superfund Site (''Site''). The Site is located on 3536 Peartree Avenue in the Eastchester section of Bronx County, New York City, New York. This notice is being published pursuant to Section 122(i) of CERCLA to inform the public of the proposed settlement and of the opportunity to comment. EPA will consider any comments received during the comment period and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

The proposed administrative settlement has been memorialized in an Administrative Order on Consent (''Order'') between EPA and Monsanto Company (''Respondent''). This Order will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate, and EPA, in accordance with Section 122(i)(3) of CERCLA, modifies or withdraws its consent to this Agreement. Under the Order, the Respondent will be obligated to pay $10,000 to the Hazardous Substance Superfund in reimbursement of its share of EPA's response costs relating to the Site plus a premium.

Pursuant to CERCLA Section 122(h)(1), the Order may not be issued without the prior written approval of the Attorney General or her designee. In accordance with that requirement, the Attorney General or her designee has approved the proposed administrative order in writing.

**DATES:** Comments must be provided on or before December 9, 1996.

**ADDRESSES:** Comments should be addressed to the Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007 and should refer to: ''Hexagon Laboratories Superfund Site, U.S. EPA Index No. CERCLA–96–0217''. For a copy of the settlement document, contact the individual listed below.

**FOR FURTHER INFORMATION CONTACT:** Jeannie M. Yu, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007. Telephone: (212) 637–3178.

Dated October 29, 1996.

William J. Muszynski,

*Acting Regional Administrator.*

[FR Doc. 96–28639 Filed 11–6–96; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER NUMBER:** 96–28059.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, November 7, 1996, 10:00 a.m., meeting open to the public.

The following item was added to the agenda: Final Report of the Audit Division on the North Carolina Democratic Victory Fund.

**DATE AND TIME:** Tuesday November 12, 1996 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, November 14, 1996 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C. (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.
Advisory Opinion 1996–35: Betty K. Wood on behalf of the Greens/Green Party USA.
Regulation: Electronic Filing—Interim Regulation (tentative).
Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

*Administrative Assistant.*

[FR Doc. 96–28734 Filed 11–5–96; 10:43 am]

**BILLING CODE 6715–01–M**

## FEDERAL MEDIATION AND CONCILIATION SERVICE

### Labor-Management Cooperation Program; Application Solicitation

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Publication of Draft Fiscal Year 1997 Program Guidelines/Application Solicitation for Labor-Management Committees.

**SUMMARY:** The Federal Mediation and Conciliation Service (FMCS) is publishing the draft Fiscal Year 1997 Program Guidelines/Application Solicitation for the Labor-Management Cooperation program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations.

**FOR FURTHER INFORMATION CONTACT:** Peter L. Regner, 202–606–8181.

Labor-Management Cooperation Program; Application Solicitation for Labor-Management Committees FY1997

*A. Introduction*

The following is the draft solicitation for the Fiscal Year (FY) 1997 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in FY81. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit and an optional video tape may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

*B. Program Description*

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the forementioned general criteria. The term ''labor'' refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor union(s) producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists either of government employees and managers in one or more units of a local or state government, managers and employees of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 1997, competition will be open to plant, area, private industry, and public sector committees. Public Sector committees will be divided into two sub-categories for scoring purposes. One sub-category will consist of committees representing state/local units of government and public institutions of higher education. The second sub-category will consist of public elementary and secondary schools.

Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (e.g., job training, mediation of contract disputes, etc.).

Required Program Elements

1. *Program Statement*—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses *Why* the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail *What* the labor-management committee as a demonstration effort will accomplish during the life of the grant. Applications that offer to provide objectives *after* a grant is awarded will receive little or no credit in this area. While a goal of ''improving communication between employers and employees'' may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in specific and measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on expansion efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. *Approach*—This section of the application specifies *How* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale

for the selection of the committee members (e.g., members represent 70% of the area or plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet (we require meetings at least every other month) as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *When* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using September 15, 1997, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section 3(b).

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

*C. Eligibility*

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applications from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible, nor will applications signed by entities such as law firms or other third parties failing to meet the above criteria.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to third-party grantees who seek funds on behalf of an entirely different committee.

*D. Allocations*

The total FY 1997 appropriation for this program is $1.5 million, of which at least $725,000 will be available competitively for new applicants. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will

be considered according to merit without regard to category. A maximum of $400,000 of the $1.5 million appropriation has been reserved for the limited continuation of FY95-funded grantees.

In addition to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its non-reserved appropriation to be awarded on a non-competitive basis. These funds will be used only to support industry-specific national-scope initiatives and/or regional industry models with high potential for widespread replication.

FMCS reserves the right to retain up to an additional five percent of the FY97 appropriation to contract for program support purposes (such as evaluation) other than administration. In addition, $25,000 has been reserved to support the Ninth National Labor-Management Conference which will be held in Chicago on April 7–9, 1998.

*E. Dollar Range and Length of Grants and Continuation Policy*

Awards to continue and expand existing labor-management committees (i.e., in existence 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued for a limited time at a 40 percent cash match ratio. Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued for a limited time at a 40 percent cash match ratio.

The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing in-plant or single department public sector applicants;
—Up to $50,000 over 18 months for new in-plant committee or single department public sector applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and multi-department public sector committees applicants;
—Up to $100,000 per 18-month period for new area, industry, and multi-department public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources. Applicants are also strongly encouraged to consult with their local or regional FMCS field office to determine what kinds of training may be available at no cost before budgeting for such training in their applications. A list of our field leadership team and their phone numbers is included in the application kit.

*F. Match Requirements and Cost Allowability*

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered ''project income,'' and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as ''in-kind'' match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for their time spent at committee meetings or time spent in training sessions. Applicants generally will not be allowed to claim all or a portion of existing full-time staff time as an expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY97 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

*G. Application Submission and Review Process*

Applications should be signed by both a labor and management representative and be postmarked no later than April 19, 1997. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus three copies, should be addressed to the Federal Medication and Conciliation Service, Labor-Management Program Services, 2100 K Street, NW, Washington, D.C. 20427. FMCS will not consider videotaped submissions or video attachments to submissions.

After the deadline has passed, all eligible applicants will be reviewed and scored initially by one or more Customer Review Boards. The Board(s) will recommend selected applications for further funding consideration. The Director, Labor-Management Program Services, will finalize the scoring and selection process. The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process.

All FY97 grant applicants will be notified of results and all grant awards will be made before September 15, 1997. Applications submitted after the April 19 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Program Services.

*H. Contact*

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits and additional information or clarification can be obtained free of charge by contacting Karen Pierce or Linda Stubbs, Federal Mediation and Conciliation Service, Labor-Management Program Services, 2100 K Street, NW, Washington, D.C. 20427; or by calling 202–606–8181.

An optional video tape, entitled ''How to Apply for a Grant From FMCS'', is also available. The tape, however, will only be sent out after we receive a specific written request for the video.

John Calhoun Wells,

*Director, Federal Mediation and Conciliation Service.*

Annex A

*Assistance to Plant, Area, and Industry-wide Labor-Management Committees*

Sec. 6. (a) This section may be cited as the ''Labor-Management Cooperation Act of 1978''.

(b) It is the purpose of this section—

(1) to improve communication between representatives of labor and management;

(2) to provide workers and employers with opportunities to study and explore new and

innovative joint approaches to achieving organizational effectiveness;

(3) to assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) to study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area or industry;

(5) to enhance the involvement of workers in making decisions that affect their working lives;

(6) to expand and improve working relationships between workers and managers; and

(7) to encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance to the formation and operation of labor-management committees.

(c)(1) Section 203 of the Labor-Management Relations Act, 1947, is amended by adding at the end thereof the following new subsection:

''(e) The Service is authorized and directed to encourage and support the establishment and operation of joint labor-management activities conducted by plant, area, and industrywide committees designed to improve labor management relationships, job security and organizational effectiveness, in accordance with provisions of section 205A.''

(2) Title II of the Labor-Management Relations Act, 1947, is amended by adding after section 205 the following new section:

''Sec. 205A. (a)(1) The Service is authorized and directed to provide assistance in the establishment and operation of plant, area and industrywide labor-management committee which:

''(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area, or industry; and

''(B) are established for the purpose of improving labor-management relationships, job security, organizational effectiveness, enhancing economic development or involving workers in decisions affecting their jobs including improving communication with respect to subjects of mutual interest and concern.

''(2) The service is authorized and directed to enter into contracts and to make grants, where necessary or appropriate, to fulfill its responsibilities under this section.



''(b)(1) No grant may be made, no contract may be entered into and no other assistance may be provided under the provisions of this section to a plant labor management committee unless the employees in that plant are represented by a labor organization and there is in effect at that plant a collective bargaining agreement.

''(2) No grant may be made, no contract may be entered into and no other assistance may be provided under the provisions of this section to an area or industrywide labor management committee unless its participants include a labor organization certified or recognized as the representative of the employees of an employer participating in such committee. Nothing in this clause shall prohibit participation in an area of industrywide committee by an employer whose employees are not represented by a labor organization.

''(3) No grant may be made under the provisions of this section to any labor-management committee which the Service finds to have as one of its purposes the discouragement of the exercise of rights contained in section 7 of the National Labor Relations Act (29 U.S.O. 157), or the interference with collective bargaining in any plant, or industry.

''(c) The Service shall carry out the provisions of this section through an office established for that purpose.

''(d) Section 302(c) of the Labor-Management Relations Act, 1947, is amended by striking the word ''or'' after the semicolon at the end of subparagraph (7) thereof and by inserting the following before the period at the end thereof; or (9) with respect to money or other things of value paid by an employer to a plant, area or industrywide labor-management committee established for one or more of the purposes set forth in section 5(b) of the Labor-Management Cooperation Act of 1978''.

''(e) Nothing in this section or the amendments made by this section shall affect the terms and conditions of any collective bargaining agreement whether in effect prior to or entered into after the date of enactment of this section.

Repealer

Sec. 7. Section 104 of the Emergency Jobs and Unemployment Assistance Act of 1974 (Public Law 93–567) is hereby repealed.

Approved October 27, 1978.

Northeastern Region

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## FEDERAL RESERVE SYSTEM

**[Docket No. R–0701]**

## Review of Restrictions on Director, Officer and Employee Interlocks, Cross-Marketing Activities, and the Purchase and Sale of Financial Assets Between a Section 20 Subsidiary and an Affiliated Bank or Thrift

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice.

**SUMMARY:** The Board is amending three of the prudential limitations established in its decisions under the Bank Holding Company Act and the Glass-Steagall Act permitting a nonbank subsidiary of a bank holding company to underwrite and deal in securities. The Board is easing or eliminating the following restrictions on these so-called section 20 subsidiaries: the prohibition on director, officer and employee interlocks between a section 20 subsidiary and its affiliated banks or thrifts (the interlocks restriction); the restriction on a bank or thrift acting as agent for, or engaging in marketing activities on behalf of, an affiliated section 20 subsidiary (the cross-marketing restriction); and the restriction on the purchase and sale of financial assets between a section 20 subsidiary and its affiliated bank or thrift (the financial assets restriction).

**EFFECTIVE DATE:** January 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Gregory Baer, Managing Senior Counsel (202) 452–3236, Thomas Corsi, Senior Attorney (202) 452–3275, Legal Division; Michael J. Schoenfeld, Senior Securities Regulation Analyst (202) 452–2781, Division of Banking Supervision and Regulation; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In its section 20 orders, the Board has established a series of firewalls designed to prevent securities underwriting and dealing risk from being passed from a section 20 subsidiary to an affiliated insured depository institution, and to prevent the federal safety net from being extended to subsidize this activity.[1] The firewalls also reduce the potential for conflicts of interest, unfair competition, and other adverse effects that may arise from securities underwriting and dealing. In adopting these restrictions, the Board stated that it would continue to review their appropriateness in the light of its experience supervising section 20 subsidiaries.

The Board originally sought comment on changes to the interlocks, cross-marketing and financial assets restrictions on July 10, 1990. The Board received forty responses to its notice, with comments coming from banks, securities firms, trade associations and other members of the public. However, because legislation affecting the section 20 firewalls was introduced shortly after the Board sought comment, and has been introduced intermittently in the years since, the Board deferred further action.[2]

On July 31, 1996, the Board announced that it was reopening the three firewalls for comment, and broadening the changes proposed. An additional 41 public comments were received. Commenters included 20 bank holding companies, eight bank trade associations, seven foreign banks, one securities trade association, and four members of the public.

Commenters expressed strong support for the three proposed amendments. Of 41 public commenters, only four opposed one or more of the proposals. Many commenters suggested that they be expanded. Commenters stated that adoption of the Board's proposals was vital to the ability of section 20 subsidiaries to compete with other providers of financial services and to provide bank holding company customers with the array of financial products and services they require. Commenters stressed that the firewalls were not required by the Glass-Steagall Act and imposed substantial costs that could not be justified by any corresponding benefit.

Three commenters made general objections to this proposal and those concerning the section 20 revenue test. A securities trade association urged the Board to defer action indefinitely in order to allow Congress to undertake comprehensive reform of the financial services system. An individual commenter argued that recent examples of malfeasance in the securities markets argued against allowing bank holding companies to expand their securities activities. Another individual argued that any action that allows bank holding companies to engage in more investment banking creates an opportunity for huge losses, and that re-regulation rather than deregulation is in order.

### II. Final Order

After considering the comments, the Board has decided to repeal the cross-marketing restriction as proposed, and amend the interlocks and financial assets restrictions in ways similar to those proposed. The Board has concluded that with these amendments, limited underwriting and dealing in securities would remain closely related to banking and a proper incident thereto, and thus permissible under section 4(c)(8) of the Bank Holding Company Act, because substantial benefits to efficiency, convenience and competition from these amendments outweigh any minimal costs.

As detailed below, the Board's experience administering these firewalls indicates that the existing restrictions are more restrictive than necessary to serve their intended purposes. Furthermore, their repeal or constriction

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[1] *See, e.g., J.P. Morgan & Co., The Chase Manhattan Corp., Bankers Trust New York Corp., Citicorp, and Security Pacific Corp.*, 75 Federal Reserve Bulletin 192, 202–03 (1989) (hereafter, *1989 Order*); *Citicorp, J.P. Morgan & Co., and Bankers Trust New York Corp.*, 73 Federal Reserve Bulletin 473, 492 (1987) (hereafter, *1987 Order*).

The interlocks and cross-marketing restrictions were included in the Board's *1987 Order* authorizing certain section 20 subsidiaries to underwrite and deal in four limited types of debt securities, and were repeated in the Board's *1989 Order* authorizing certain section 20 subsidiaries to underwrite and deal in all types of debt and equity securities. *See 1987 Order* at 503, 504 (Firewalls #10 and #13); *1989 Order* at 215 (Firewalls #13 and #16). The financial assets restriction was included in the 1989 Order but not the 1987 Order. *See 1989 Order* at 216 (Firewall #22). All three have since been applied to foreign banks operating section 20 subsidiaries. *Canadian Imperial Bank of Commerce, The Royal Bank of Canada, Barclays PLC and Barclays Bank PLC*, 76 Federal Reserve Bulletin 158, 172 (1990) (hereafter, *1990 Order*) (Firewalls #13, #16, and #22).

[2] These older comments, many of which have been superseded by a subsequent comment or mooted by changes to the amendments proposed, are not discussed in detail below but were considered by the Board.

should lower operating costs for existing section 20 subsidiaries and eliminate significant barriers to entry for smaller bank holding companies considering the establishment of a section 20 subsidiary. The amendments should also benefit customers. Bank holding companies will be able to serve their customers needs more effectively and should be able to pass along cost savings derived from improved efficiency; new entrants should provide better service for small and mid-size issuers, and increased competition may lower costs.

*A. Interlocks Restriction*

1. Background

The interlocks restriction currently prohibits all director, officer and employee interlocks between a section 20 subsidiary and an affiliated bank.[3] The restriction seeks to ensure that the risks of underwriting and dealing are not passed from a section 20 subsidiary to an affiliated bank.[4]

The Board proposed to eliminate the firewall entirely or replace it with a more narrow restriction. With respect to directors, the Board sought comment on whether to prohibit a majority of the board of directors of a section 20 subsidiary from being composed of directors, officers or employees of an affiliated bank, and a majority of the board of directors of a bank from being composed of directors, officers or employees of an affiliated section 20 subsidiary. The Board also sought comment on whether it should limit the prohibition on officer interlocks to only the chief executive officer or senior executive officers of each company.

2. Summary of Comments

Commenters devoted the majority of their comments to this restriction, stressing that its elimination would increase the operational efficiency of bank holding companies and allow entry by smaller organizations that otherwise could not bear the costs of staffing a section 20 subsidiary. Commenters also stated that there was no need for an interlocks restriction to prevent risk from being passed from a section 20 subsidiary to an affiliated bank.

More specifically, commenters stated that the existing interlocks restriction causes redundant staffing and operational inefficiencies by precluding functional reporting, supervision and coordination between complementary section 20 and bank business units. For example, one large bank holding company commenter noted that if the restriction were eliminated, senior personnel who oversee the treasury function in a bank could oversee the related businesses in an affiliated section 20 subsidiary; similarly, a senior officer serving as the global head of a particular business, such as Fixed Income or Emerging Markets, could participate in the management of each of the entities involved in those businesses. Another large bank holding company commenter explained that it had been forced to move its project finance business out of its section 20 subsidiary because of the interlocks restriction; instead, the company has placed virtually all offshore employees, including project finance employees, in its lead bank or its subsidiaries.

Many commenters stressed that by preventing a centralized management structure, the interlocks restriction makes it more difficult for bank holding companies to control and manage risk. Indeed, commenters argued that restricting interlocks may actually increase risks to the bank holding company by preventing the most experienced and responsible members of the organization from monitoring risk.

Commenters also noted that the Glass-Steagall Act does not require an interlocks restriction, and that the Board has not restricted interlocks between a bank and any type of affiliate other than a section 20 subsidiary. Commenters stated that customer confusion and challenges to corporate separateness have not arisen with respect to these other affiliates. Commenters also argued that, with respect to section 20 subsidiaries, any such concerns are adequately addressed by other restrictions.

Commenters stated that SEC and Federal Reserve capitalization requirements for section 20 companies and the restrictions on inter-affiliate transactions contained in sections 23A and 23B of the Federal Reserve Act would be sufficient to ensure that the companies are operated independently, and that disclosures would be sufficient to prevent customer confusion.

Commenters generally opposed the Board's proposed alternatives to eliminating the restriction. The suggested restriction on officer interlocks was more frequently and deeply criticized, with commenters arguing that interlocks at the senior level were most necessary for effective management. Although commenters also generally opposed any restriction on director interlocks, a few commenters noted that it was neither as great an impediment to sound management nor as great a compliance burden as the restriction on officer interlocks.

3. Final Order

The Board is adopting the amendments substantially as proposed, and thereby substantially reducing the scope of the interlocks restriction. The Board has concluded that a blanket prohibition on director, officer and employee interlocks is an unnecessary restraint under section 4(c)(8) of the Bank Holding Company Act. Nonetheless, for the reasons set forth below, the Board has concluded that a narrow interlocks restrictions would further ensure corporate separateness at minimal cost. Accordingly, the Board is prohibiting directors, officers or employees of a bank from serving as a majority of the board of directors or the chief executive officer of an affiliated section 20 subsidiary, and prohibiting directors, officers or employees of a section 20 subsidiary from serving as a majority of the board of directors or the chief executive officer of an affiliated bank. The Board is imposing no restriction on employee interlocks. The Board intends to review these restrictions after these changes to the firewalls, and any subsequent changes made after a more comprehensive review, have been implemented.

a. *Officer and director interlocks/ Corporate separateness*. Courts generally prefer to honor the corporate form and recognize corporations as legal entities separate from their shareholders. ''Piercing the corporate veil'' refers to the judicially imposed exception to this principle by which courts disregard corporate separateness and impose liability on an individual or corporate shareholder or corporate sibling. In deciding whether one company should be held liable for the liabilities of another, courts generally require 1. that the corporate form be used to commit a fraud or injustice on the plaintiff; and 2. that one company so dominate another that they should be considered, and held liable, as one.[5]

[3] Hereafter, references to banks include thrifts.

[4] In specific cases, the Board has authorized limited officer or director interlocks between a section 20 subsidiary and its affiliated banks. *See, e.g., National City Corporation*, 80 Federal Reserve Bulletin 346, 348–9; *Synovus Financial Corp.*, 77 Federal Reserve Bulletin 954, 955–56 (1991); *Banc One Corporation*, 76 Federal Reserve Bulletin 756, 758 (1990).

[5] In making the latter determination, courts consider a multitude of factors. These factors include: (1) the absence of the formalities that are part and parcel of corporate existence; (2) inadequate capitalization; (3) overlap in ownership, officers, directors, and personnel; (4) common office space, address and telephone numbers of corporate entities; (5) the amount of business discretion displayed by the allegedly dominated corporation; (7) whether the dominated corporation is dealt with at arms length; (8) whether the corporations are

Repeal of the interlocks and cross marketing restrictions would allow increased synergies in the operation of a section 20 subsidiary and its bank affiliates. Persons may be employed by both companies, and the trend toward common management of like business functions could accelerate, with reporting lines running between companies. While such coordinated management and commonality of personnel generally are not sufficient to justify disregarding the corporate form, they are sometimes combined with other factors to justify such a decision.

On the other hand, SEC rules and other Board firewalls require that a section 20 subsidiary be adequately capitalized, and the examination process ensures that the corporate formalities are maintained and that holding company affiliates deal with each other on arm's-length terms, as required by section 23B of the Federal Reserve Act.[6] These are important factors considered by courts in deciding whether to pierce the corporate veil.

After weighing these considerations, the Board has concluded that a restriction on interlocks at the most senior level might provide some further assurance of corporate separateness. The director interlocks restriction should clarify that the goals of the section 20 subsidiary, while they may be intertwined with an affiliated bank, are independent of the bank. The chief executive officer interlocks restriction should clarify that control of the day-to-day activities of each company is independent of the other.

Of equal note, these minimal restrictions should not impose significant costs to the bank holding company. Finding qualified directors who are not connected to an affiliate (and who could be drawn from the holding company) should not burden a section 20 subsidiary or a bank. Prohibiting a section 20 subsidiary or a bank from designating a director, officer or employee of an affiliate as its chief executive officer is a minimal burden, as the job of chief executive officer should be a full-time occupation.

b. *Employee interlocks/Vicarious liability.* While employee interlocks could be considered in a decision about whether to pierce the corporate veil, the employee interlocks restriction serves primarily to prevent customer confusion about the identity of the customer's counterparty, and potential vicarious liability of the bank for the actions of an affiliated section 20 subsidiary. Thus, the employee interlocks restriction is more closely related to the cross-marketing restriction, which has the same aim.

A bank could be held vicariously liable for the actions of an affiliate's employee if a customer reasonably believed that the employee were acting under the actual or apparent authority of the bank. Clearly, if a section 20 employee were also an employee of the bank (as elimination of the employee interlocks restriction would allow) and was also selling bank products (as elimination of the cross-marketing restriction would allow), the potential for such liability might increase.

However, for the reasons discussed below in connection with the cross-marketing restriction, the Board has concluded that current disclosure requirements and practices should be sufficient insurance against vicarious liability. The Board emphasizes that supervision by federal and state banking agencies will need to continue with increased vigilance in order to ensure that the disclosures are adequate and are provided whenever appropriate.

4. Continued Supervisory Concerns

Although the Board has concluded that a broad interlocks restriction is unnecessary to ensure corporate separateness or prevent customer confusion, proper risk management may require further restriction of interlocks on a case-by-case basis. For example, an employee responsible for custodial services at a bank generally should not be involved in trading at an affiliated section 20 subsidiary. In such cases, the problem is not with the dual employment *per se*, but rather with the potential for conflicts of interest or other risks arising from the nature of the employee's duties (be they conducted at the bank or the section 20 subsidiary). These matters will continue to be addressed in the supervisory process by ensuring prudent internal controls—for example, proper segregation of duties—to manage conflicts of interest and prevent violations of law.

*B. Cross-marketing Restriction*

1. Background

The Board's section 20 orders prohibit a bank from acting as agent for, or engaging in marketing activities on behalf of, an affiliated section 20 subsidiary.[7] This restriction was intended to prevent customers from being confused about the identity of their counterparty, and perhaps attempting to hold the bank liable for actions of an affiliated section 20 subsidiary. Such liability could arise under a variety of legal theories, most notably vicarious liability (or *respondeat superior*), where a company can be liable for the actions of its agent, regardless of whether the company itself was at fault.[8] The Board sought comment on whether to eliminate this restriction.

2. Summary of Comments

Commenters stated that the existing restriction prevents bank holding companies from serving their customers effectively. One commenter explained that if a customer wishes to purchase a security from a section 20 subsidiary and also enter into a related contract with a bank affiliate for the purposes of managing the risks of that security, the cross-marketing restriction requires the customer to deal and communicate separately with bank and section 20 company representatives. Another commenter explained that the restriction complicates the client calling efforts of its relationship managers. The commenter found this restriction particularly unjustifiable in the wholesale market, where section 20 subsidiaries do the majority of their business and where the role of each company is well understood. Finally,

treated as independent profit centers; (9) the payment or guarantee of debts of the dominated corporation by other corporations in the group; and (10) whether the corporation in question has property that was used by other of the corporations as if it were its own. *See, e.g., W. Passalacqua Builders v. Resnick Developers,* 933 F.2d 131 (2d Cir. 1991) (applying New York common law).

[6] 12 U.S.C. 371c-1.

[7] The Board has allowed a few limited exceptions to the cross-marketing restriction. *See Letter Interpreting Section 20 Orders,* 81 Federal Reserve Bulletin 198 (1995).

[8] One of the commenters to the 1990 notice cautioned that liability could arise not only under the legal theory of vicarious liability but also under secondary liability as a controlling person under Section 20(a) of the Securities Exchange Act of 1934, aiding and abetting, and conspiracy.

To be liable under the Securities Exchange Act for the actions of an employee, a bank would have to control the actions of the employee at the section 20 subsidiary. However, the Act specifically provides that no liability can be imposed if the controlling person can show that it acted in good faith and did not directly or indirectly induce the act or acts constituting the violation, *see* 15 U.S.C. § 78(t)(a), and courts have held that a bank may demonstrate its good faith under section 20(a) through maintenance and enforcement of ''a reasonable and proper system of supervision and internal control.'' *See Hollinger v. Titan Capital Corp.,* 914 F.2d 1564, 1576 (9th Cir. 1990).

In order to be liable for vicarious liability based on civil conspiracy, a defendant must have knowingly and substantially assisted in the fraud. Aiding and abetting liability, which in 1990 required a showing akin to civil conspiracy, was eliminated as a private cause of action in *Central Bank v. First Interstate Bank,* 511 U.S. 164 (1994). The SEC may still bring an action for civil money penalties for aiding and abetting, with penalties determined by statute. *See* 15 U.S.C. 78u(d)(1), (d)(3).

another commenter noted that its customers had frequently expressed frustration with the multiplicity of contacts and communications required by the current firewall.

Commenters stated that repeal would eliminate these inefficiencies. One commenter explained that repeal would enable a single officer—whether in a bank or a section 20 subsidiary—to market the full range of products offered by the holding company group, and better tailor the group's products to the needs of the customer. Bank holding company commenters also stated that repeal of the cross-marketing restriction would eliminate a competitive inequality between them and their investment banking competitors, who market their products without restrictions. One commenter noted that investment banks have expanded beyond traditional financial advisory and securities underwriting services into bank loan syndications, bridge financings and private equity investment.

Commenters also stated that existing disclosure requirements—most notably the Interagency Statement on Retail Sales of Nondeposit Products—were sufficient to address any concerns about customer confusion. One commenter observed that clients for sophisticated financial products are unlikely to be confused about the structure of a proposed transaction or the corporate identity of the counterparties involved, and that where the insured status of a counterparty may have significance, such disclosure requirements are sufficient to ensure that the necessary information is available to the customer.

Three commenters raised specific objections to repeal of the cross-marketing firewall. A securities trade association stated that while it was aware that safety and soundness and investor protection concerns were the paramount issues causing the Board to impose the various firewalls, the cross-marketing restriction has at least partially maintained a level of competitive fairness between section 20 subsidiaries and other securities firms by limiting a section 20 subsidiary's ability to market its products and services through an affiliated bank's retail branch system—an opportunity not available to other securities firms. A bank trade association urged the Board to allow cross-marketing only on a case-by-case basis in order to avoid the danger that products or services could be packaged in a way that would give bank holding companies an unfair competitive advantage. Another commenter stated that repeal of the cross-marketing restriction would pose risks to the public, citing a study showing that some consumers mistakenly believe that money market mutual funds are insured.

3. Final Order

The Board has decided to repeal the cross-marketing restriction. As noted by the commenters, existing disclosure requirements adequately address concerns about customer confusion. The Interagency Statement on Retail Sales of Nondeposit Products states that, for any sale of a non-deposit product by a bank employee or on bank premises, the customer must receive and acknowledge a written statement that the product being sold is not federally insured, is not a deposit or other obligation of the bank and is not guaranteed by the bank, and is subject to investment risks including loss of principal.[9] Although the Interagency Statement does not apply to sales to institutional customers, the Board understands that, while obtaining acknowledgements may be infeasible, disclosures are sometimes provided. The Board believes that this is good practice, particularly in the case of individual investors. *See* 12 CFR 225.2(g)(3).

Furthermore, other firewalls require a section 20 subsidiary to provide each of its customers with a special disclosure statement describing the difference between the underwriting subsidiary and its bank affiliates, and stating that securities sold, offered or recommended by the section 20 subsidiary are not deposits, not federally insured, not guaranteed by an affiliated bank, and not otherwise an obligation or responsibility of such bank.[10] Although the disclosure firewall does not require that a section 20 subsidiary obtain an acknowledgement, the Interagency Statement would require an acknowledgement if the sale were on bank premises, and the Board understands that section 20 subsidiaries generally obtain an acknowledgement even when operating off bank premises. The Board believes that this represents good practice. Once again, supervisory efforts by the Board and other agencies will need to be emphasized in this area.

Finally, the Board notes that no serious problems of *respondeat superior* liability have arisen with subsidiaries engaged in underwriting eligible securities, despite the absence of a cross-marketing firewall.

The concerns raised by commenters do not argue for retaining the cross-marketing restriction. First, although banks could in theory package their products in order to gain an unfair competitive advantage, this danger is addressed specifically by the antitrust laws, most notably the Sherman Act, and by a special anti-tying restriction contained in section 106 of the Bank Holding Company Act Amendments of 1970. 12 U.S.C. 1972(1). Second, even assuming that the cross-marketing firewall helps to create competitive equality between section 20 subsidiaries and other securities firms, as one commenter stated, the Board does not believe that keeping customers ignorant of business opportunities is an effective or appropriate way to maintain competitive equality.

4. Continued Compliance Concerns

Furthermore, member banks should be aware that repeal of the cross-marketing firewall does not relieve them of their obligation to comply with sections 16 and 21 of the Glass-Steagall Act. 12 U.S.C. 24 (Seventh); 12 U.S.C. 378a. Although the Board will no longer impose a blanket prohibition on a member bank's acting as agent for an affiliated section 20 subsidiary, the bank will still be prohibited from distributing securities underwritten by the section 20 subsidiary.

*C. Restriction on Purchase and Sale of Financial Assets*

1. Background

The Board sought comment on amending the financial assets restriction, which generally prohibits a bank from purchasing financial assets from, or selling such assets to, an affiliated section 20 subsidiary. An existing exception to this restriction allows the purchase or sale of U.S. Treasury securities or direct obligations of the Canadian federal government at market terms, provided that they are not subject to repurchase or reverse repurchase agreements between the underwriting subsidiary and its bank affiliates. The Board sought comment on whether it should expand this exception to include the purchase or sale of any assets with a sufficiently broad and liquid market to ensure that the transaction is on market terms.

2. Summary of Comments

Commenters strongly favored an expanded exception to the restriction on the purchase and sale of financial assets, though many commenters favored eliminating the restriction altogether. Several commenters argued that the financial assets restriction was unduly broad to the extent it prohibits a bank from purchasing and selling securities

[9] Compliance with the Interagency Statement is examined for by the federal banking agencies.

[10] *E.g. 1989 Order* at 215.

that it is permitted by statute to purchase and sell for its own account. Commenters noted that sections 16 and 21 of the Glass-Steagall Act, and regulations adopted pursuant thereto, require that a bank determine that ''there is adequate evidence that the obligor will be able to perform all that it undertakes to perform in connection with the security, including all debt service requirements, and that the security is marketable'' before purchasing a security.[11] Commenters contended that these restrictions fully address the issues of credit quality and liquidity in bank investments.

Another commenter stressed that regional bank holding companies have legitimate reasons for asset transactions between a section 20 company and its affiliated bank. Because the securities distribution side of regional section 20 companies tends to be dominated by individual investors and smaller institutional and corporate investors, a bank holding company might find it economically advantageous for its section 20 subsidiary to acquire securities which can both be sold to the bank for its investment portfolio and distributed by the section 20 subsidiary to its investor clients. The commenter stated that such commingled transactions enable the institution to obtain securities in the open market at more favorable terms than would otherwise be available at lower volume.

A securities trade association objected to the proposal on the grounds that it would permit banks to sell financial assets to, or purchase such assets from, affiliated section 20 subsidiaries on terms or under conditions that would not be available to other securities firms, in effect subsidizing the activities of their affiliated section 20 subsidiaries. The commenter also expressed concern that banks could provide their section 20 affiliates with access to certain financial assets either earlier, or in greater amounts, than other securities firms.

3. Final Order

The Board is expanding the exception to the financial assets restriction, but using a more definite standard than that proposed. Rather than allowing the purchase or sale of any security with a ''broad and liquid market,'' the Board is extending the exception to ''assets having a readily identifiable and publicly available market quotation and purchased at that market quotation.'' Asset purchases meeting this price availability standard are already exempt from the quantitative and qualitative restrictions on inter-affiliated funding contained in sections 23A and 23B of the Federal Reserve Act. 12 U.S.C. 371c(d)(6); 12 U.S.C. 371c–1(d)(3). Use of the same standard is appropriate here. First, the same policy is being served: ensuring that an inter-affiliate transaction is so verifiably arm's-length so as not to require federal regulation of its terms. Second, use of the same standard will ease compliance burden for banks, who are experienced in administering it. Indeed, for any purchase of assets by a bank from an affiliated section 20 subsidiary, the bank will already be required to ensure compliance with this standard for purposes of sections 23A and 23B. Third, compliance with this standard would ensure that section 20 affiliates would not gain a competitive advantage over other securities firms through asset sales to their affiliated banks.

The Board has decided to retain for now the financial assets restriction to the extent that it prohibits a purchase or sale of less liquid assets and any purchase or sale of assets subject to a repurchase or reverse repurchase agreement. Any further changes to the financial assets restriction will be considered in conjunction with other funding firewalls, as part of a more comprehensive review of all the remaining firewalls between a section 20 subsidiary and its affiliated banks.

Revised Amendment to Firewalls

The Board is amending the section 20 firewalls as follows:

Interlocks Restriction

*1987 and 1989 Orders (Domestic Bank Holding Companies)*

Directors, officers or employees of a bank or thrift shall not serve as a majority of the board of directors or the chief executive officer of an affiliated section 20 subsidiary, and directors, officers or employees of a section 20 subsidiary shall not serve as a majority of the board of directors or the chief executive officer of an affiliated bank or thrift. The underwriting subsidiary will have separate offices from any affiliated bank or thrift.[***]

*1990 Order (Foreign Banks)*

Directors, officers or employees of Applicant's U.S. bank or thrift subsidiaries, branches or agencies shall not serve as a majority of the board of directors or the chief executive officer of an affiliated section 20 subsidiary, and directors, officers or employees of a section 20 subsidiary shall not serve as a majority of the board of directors or the chief executive officer [+++] of an affiliated U.S. bank or thrift subsidiary, branch or agency of Applicant, except that the manager of a branch or agency may act as a director of the underwriting subsidiary. The underwriting subsidiary will have separate offices from any bank or thrift subsidiary or branch or agency of Applicant.[###]

Cross-Marketing Restriction

*1987, 1989 and 1990 Orders*

The cross-marketing restriction is removed.

Financial Assets Restriction

*1989 and 1990 Orders*

No bank or thrift (or U.S. branch or agency of a foreign bank) shall, directly or indirectly, for its own account, purchase financial assets of an affiliated underwriting subsidiary or a subsidiary thereof or sell such assets to the underwriting subsidiary or subsidiary thereof. This limitation shall not apply to the purchase and sale of assets having a readily identifiable and publicly available market quotation and purchased at that market quotation for purposes of section 23A of the Federal Reserve Act, 12 U.S.C. 371c(d)(6), provided that those assets are not subject to a repurchase or reverse repurchase agreement between the underwriting subsidiary and its bank or thrift affiliate.

By order of the Board of Governors of the Federal Reserve System, November 1, 1996.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 96–28619 Filed 11–6–96; 8:45 am]

BILLING CODE 6210–01–P

## Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank

[11] 12 CFR 1.5(a).

[***] An underwriting subsidiary may have offices in the same building as a bank or thrift affiliate if the underwriting subsidiary's offices are clearly distinguished from those of the bank or thrift affiliate.

[+++] For purposes of this firewall, the manager of a U.S. branch or agency of a foreign bank normally will be considered to be the chief executive officer of the branch or agency.

[###] An underwriting subsidiary may have offices in the same building as a bank or thrift subsidiary or branch or agency of Applicant if the underwriting subsidiary's offices are clearly distinguished from those of the bank, thrift, branch or agency.

holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 29, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. CN Bancorp, Inc.*, Glen Burnie, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of County National Bank, Glen Burnie, Maryland (in organization).

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. First Bank Holding Company*, Tallahassee, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank, Tallahassee, Florida.

Board of Governors of the Federal Reserve System, November 1, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96–28589 Filed 11–6–96; 8:45 am]

**BILLING CODE 6210–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

Proposed Projects

*Title:* Title IV–B Five Year Plan, Annual Progress and Services Report and CFS–101.

*OMB No.:* New collection.

*Description:* The information collection activities in the final rule have changed since publication of the NPRM in October 1994. Therefore, public comment is invited on the revised collections. The content of the plan, and the annual progress and services report are prescribed in the final rule. The CFS–101 is a revised report form.

Under title IV–B, subparts 1 and 2, States and Indian Tribes are to submit a five year plan, an annual progress and services report, and an annual budget request and estimated expenditure report (CFS–101). The plan is used by States and Indian Tribes to develop and implement services and describe coordination efforts with other federal, state and local programs. The Annual Progress and Services Report is used to provide updates and changes in the goals and services under the five year plan. The CFS–101 will be submitted annually with the Annual Progress and Services Report to apply for appropriated funds for the next fiscal year.

*Respondents:* State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

| Instrument | No. of respondents | No. of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| CFSP | 25 | 1 | 500 | 12,500 |
| APSR | 114 | 1 | 120 | 13,680 |
| CFS–101 | 114 | 1 | 5 | 570 |

*Estimated Total Annual Burden Hours:* 20,750.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or

other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 1, 1996.

Bob Sargis,

*Acting Reports Clearance Officer.*

[FR Doc. 96–28592 Filed 11–3–96; 8:45 am]

**BILLING CODE 4184–01–M**

## Proposed Information Collection Activity; Comment Request

Proposed Projects

*Title:* Child Care Biannual Aggregate Report.

*OMB No.:* New Collection.

*Description:* This legislatively mandated report collects program and participant's data on all children and families receiving direct CCDF services. Aggregate data will be collected and will be used to determine the scope, type, and methods of child care delivery, and to provide a report to Congress.

*Respondents:* State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ACF–800 | 54 | 2 | 40 | 4,320 |

*Estimated Total Annual Burden Hours:* 4,320

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 1, 1996.

Bob Sargis,

*Acting Reports Clearance Officer.*

[FR Doc. 96–28593 Filed 11–3–96; 8:45 am]

**BILLING CODE 4184–01–M**

## Food and Drug Administration

**[Docket No. 96N–0249]**

## Applications for Exemption From Preemption of State and Local Requirements Pertaining to the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is inviting State and local governments to file applications for exemption from preemption for requirements governing the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents. FDA's regulations provide that the agency may, under certain conditions, exempt a State or local requirement from preemption. This action is intended to ensure that the objectives of the final rule pertaining to the sale and distribution of cigarettes and smokeless tobacco to children and adolescents are reached. In order to facilitate and expedite review of these applications for exemption from preemption, FDA will consider the applications in two separate groups. The two groups are based on the effective dates for different requirements under the final rule. State and local governments seeking exemption from preemption must submit a separate application for each of the two groups. In determining whether to grant or deny exemptions for submitted applications, FDA intends to consolidate all of the applications within each group and to use a separate proceeding for each of the two groups.

**DATES:** Submit applications for group 1 (i.e., requirements that are different from or in addition to requirements under 21 CFR 897.14(a) and (b)) by December 9, 1996; submit applications for Group 2 (i.e., requirements that are different from or in addition to all other requirements in 21 CFR part 897) by May 6, 1997.

**ADDRESSES:** Applications to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

**SUPPLEMENTARY INFORMATION:**

I. Background

Under section 521(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k(a)), any State or local requirement applicable to a device is preempted if such requirement: (1) Is different from, or in addition to, any requirement applicable under the act to the device; and (2) relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under the act.

In implementing section 521 of the act, FDA has historically interpreted that provision narrowly and has found it to have preemptive effect only for those State and local requirements that, in fact, clearly impose specific requirements with respect to specific devices that are manifestly in addition to analogous Federal requirements (see § 808.1(d) (21 CFR 808.1(d))). In addition, section 521 of the act ''does not preempt State or local requirements that are equal to, or substantially identical to, requirements imposed by or under the act'' (§ 808.1(d)(2)).

In the Federal Register of August 28, 1996 (61 FR 44396), FDA issued a final rule (the final rule) governing the sale and distribution of nicotine-containing

cigarettes and smokeless tobacco in order to protect children and adolescents. FDA has determined that cigarettes and smokeless tobacco are nicotine-delivery devices under the act. The final rule will become effective on August 28, 1997, except for the following sections: (1) Section 897.14(a) (21 CFR 897.14(a)), which prohibits sales of cigarettes or smokeless tobacco to any person younger than 18 years of age, will become effective on February 28, 1997; (2) § 897.14(b), which requires retailers to verify that purchasers of cigarettes and smokeless tobacco are at least 18 years old, will become effective on February 28, 1997; and (3) § 897.34(c), which places certain restrictions on event sponsorships, will become effective on August 28, 1998. Once a requirement under the final rule becomes effective, analogous State and local requirements that are different from, or in addition to, that requirement will be preempted under section 521(a) of the act.

The agency's assertion of jurisdiction over cigarettes and smokeless tobacco does not preclude State or local requirements other than those expressly preempted by section 521(a) of the act. Moreover, State and local requirements that are preempted by the final rule may be exempted from preemption in accordance with section 521(b) of the act and its implementing regulations (part 808 (21 CFR part 808)).

## II. Exemptions from Preemption

Section 521(b) of the act and its implementing regulations provide that FDA may, by regulation issued after notice and an opportunity for an oral hearing, exempt a State or local requirement from preemption under such conditions as the Commissioner of Food and Drugs (the Commissioner) may prescribe if the State or local requirement is: (1) More stringent than a requirement under the act that would be applicable to the device if an exemption were not in effect; or (2) required by compelling local conditions, and compliance with the State or local requirement would not cause the device to be in violation of any requirement applicable under the act.

In this document and consistent with the final rule, FDA is inviting all State and local governments to submit applications to exempt from preemption those State or local requirements pertaining to cigarettes or smokeless tobacco that are preempted by the agency's final rule. Under § 808.25(g), State or local requirements pertaining to cigarettes or smokeless tobacco may be exempted from preemption under section 521(b) of the act if the State or local requirement: (1) Meets the exemption requirements established under section 521(b) of the act; and (2) is in the best interest of public health and is consistent with the goals of the final rule. Exemptions from preemption granted by FDA apply only to preemption under section 521 of the act.

Exemptions from preemption will be granted only for those requirements that have the force and effect of law, i.e., have been enacted, promulgated, or issued in final form. However, an application may be submitted after the establishment of the statute or regulation by the State or local government, but before the effective date of the requirement. With regard to any State or local requirements that have not yet been enacted, promulgated, or issued in final form, any State, political subdivision, or other interested party may seek, in accordance with § 808.5, an advisory opinion as to whether such State or local requirements would be preempted once established. To the extent that requirements are enacted, promulgated, or issued in final form in the future, and such requirements are preempted under section 521(a) of the act, State or local governments may submit applications for exemption from preemption for such requirements at that time.

## III. Applications

In order to facilitate and expedite review of the applications submitted by State and local governments according to this document, FDA will consider the applications in two separate groups. The groups, which are based on the effective dates for different requirements under the final rule, are as follows:

(1) *Group 1*: State and local requirements governing the sale or distribution of cigarettes or smokeless tobacco that are different from, or in addition to, FDA requirements under § 897.14(a) and § 897.14(b) of the final rule. Section 897.14(a) prohibits retailers from selling cigarettes or smokeless tobacco to anyone younger than 18 years of age. Section 897.14(b) requires retailers (except in certain situations) to verify, by means of photographic identification containing the bearer's date of birth, that the person purchasing the product is not younger than 18 years of age. No such verification is required for any person over the age of 26.

(2) *Group 2*: State and local requirements governing the sale or distribution of cigarettes or smokeless tobacco that are different from, or in addition to, all other FDA requirements under the final rule.

State and local governments that want to file an application for exemption from preemption pursuant to this document should submit a separate application for each group. Applications for exemption from preemption for existing requirements that are preempted may be submitted now or at any time in the future. In order to be considered as part of the proceedings described in this notice, however, applications for Group 1 should be submitted by December 9, 1996 and applications for Group 2 should be submitted by May 6, 1997. Until exemptions are granted for preempted State or local requirements, the requirements may not be enforced.

Each application should be in the form of a letter to the Commissioner. The application should be identified with the docket number found in brackets in the heading of this document, as well as the group number under which exemption is being sought. An original and two copies of the application, and any accompanying material, subsequent reports, or correspondence concerning the application, should be submitted to the Dockets Management Branch (address above).

The application letter must be signed by an individual who is authorized to request the exemption on behalf of the State or local government. In the past, most exemption requests have been submitted by State Attorneys General. In some States or localities, other officials may also be authorized under State or local law to submit requests.

The envelope of the application, report, or correspondence should indicate that it concerns an application for exemption from preemption of device requirements. In addition, the envelope should be identified with the docket number found in brackets in the heading of this document, as well as the group number under which exemption is being sought.

The application must be accompanied by sufficient information and data to enable FDA to determine whether the requirement in question is preempted by section 521(a) of the act and, if so, whether the Commissioner should grant the exemption as provided in section 521(b) of the act. Specifically, for each requirement for which an exemption is sought, the application shall include the following information to the extent possible, or an explanation of why such information has not been included:

(1) Identification and a current copy of the relevant statute, rule, regulation, or ordinance, as well as the date of enactment, promulgation, or issuance in final form.

(2) Copies of relevant background material, including any legislative history, hearing reports, or similar materials pertinent to enactment, promulgation, or issuance of the requirement, to enable the Commissioner to determine the intent behind the State or local requirement.

(3) Copies of any judicial or administrative interpretations of the State or local requirement.

(4) A comparison of the requirement of the State or political subdivision and any Federal requirements under the act or the final rule to show similarities and differences.

(5) Information on the nature of the problem addressed by the requirement of the State or political subdivision.

(6) Identification of which (or both) of the following bases is relied upon for seeking an exemption from preemption:

(a) The requirement is more stringent than a requirement applicable to cigarettes or smokeless tobacco under the act or the final rule. If the State or political subdivision relies upon this basis for exemption from preemption, the application should include information or an explanation as to how and why the requirement of the State or political subdivision is more stringent than requirements under the act or the final rule.

(b) The requirement is required by compelling local conditions, and compliance with the requirement would not cause cigarettes or smokeless tobacco to be in violation of any applicable requirement under the act or the final rule. If the State or political subdivision relies upon this basis for exemption from preemption, the application should include information or an explanation as to why compliance with the requirement of the State or political subdivision would not cause cigarettes or smokeless tobacco to be in violation of any applicable requirement under the act and why the requirement is required by compelling local conditions.

(7) The title of the chief administrative or legal officers of the State or local agency that has primary responsibility for administration of the requirement.

(8) If requested by FDA, any records concerning administration of the requirement.

(9) Information on how the public health may be benefitted and how interstate commerce may be affected, if an exemption is granted.

(10) Any other pertinent information respecting the requirement voluntarily submitted by the applicant.

(11) For local requirements that have been preempted under State law, a copy of the relevant State preemptive provision and an explanation of why the local requirement is no longer preempted under State law.

IV. Procedures for Processing Applications

Because FDA anticipates that the issues raised within each group by the applications for exemption will be similar or related, the agency intends to consolidate all of the applications within each group and to use a separate proceeding for each of the two groups. FDA notes that the agency has consolidated proceedings on such matters in the past (e.g., hearing aids). The process for each consolidated proceeding will be as follows:

(1) Upon receipt of an application, FDA will evaluate the application on its own merits and the circumstances applicable to the jurisdiction submitting the application in order to determine whether to grant or deny an exemption.

(2) FDA will issue a single Federal Register document (proposed rule) for each group that will, for each applying State or local government, propose to grant or deny exemptions from preemption for existing State and local government requirements that fall within that group. At the same time, FDA will issue a notice in the Federal Register providing an opportunity to request an oral hearing. If a hearing is granted, it will cover all applications for exemption from preemption for those requirements that fall within the applicable group, and it will be conducted under FDA regulations in 21 CFR parts 15 and 808.

(3) For each group, FDA will review all written comments submitted on the proposed rule and the administrative record of the oral hearing, if an oral hearing is granted, and will publish in the Federal Register a final rule identifying each requirement for which an exemption from preemption is granted, conditionally granted, or denied.

Specific details regarding the procedures under which applications will be processed can be found in § 808.25.

Applications submitted after the applicable dates set forth in this document will be considered by FDA in the order that they are received after the agency completes the proceedings described in this document.

Dated: November 1, 1996.

William B. Schultz,

*Deputy Commissioner for Policy.*

[FR Doc. 96–28681 Filed 11–6–96; 8:45 am]

BILLING CODE 4160–01–F

**[Docket No. 94P–0429]**

## Additional Data Regarding the Composition of Conjugated Estrogens; Availability; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that additional materials have been submitted to Docket No. 94P–0429, the docket established for a citizen petition filed on November 30, 1994, on behalf of Wyeth-Ayerst Laboratories, Division of American Home Products Corp. These materials include amendments to the petition and data supporting the petition submitted by Wyeth-Ayerst as well as data submitted to the docket by FDA and other interested persons. Among the documents submitted to the docket by FDA is a document entitled ''Preliminary Analysis of Scientific Data on the Composition of Conjugated Estrogens.'' The agency is requesting comments on this document as well as on the citizen petition, amendments to the petition, and other materials in the docket.

**DATES:** Written comments by December 9, 1996.

**ADDRESSES:** Submit written requests for single copies of the document entitled ''Preliminary Analysis of Scientific Data on the Composition of Conjugated Estrogens'' to the Drug Information Branch, Division of Communications Management (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the materials submitted to the docket to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one. Requests and comments should be identified with the docket number found in brackets in the heading of this document. Materials related to the Wyeth-Ayerst citizen petition on conjugated estrogens are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Diane Sullivan-Ford, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish

Pl., Rockville, MD 20855, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** On November 30, 1994, a citizen petition was filed on behalf of Wyeth-Ayerst Laboratories, Division of American Home Products Corp. The petition was amended on December 2, 1994; September 26, 1995; November 6, 1995; March 8, 1996; March 15, 1996; and June 27, 1996. The citizen petition requests, among other things, that FDA: (1) Determine that sodium delta 8,9-dehydroestrone sulfate (delta 8,9–DHES) is a concomitant component in conjugated estrogens tablets; (2) officially recommend that the United States Pharmacopeial Convention amend the United States Pharmacopeia (USP) monograph for conjugated estrogens and conjugated estrogens tablets to include delta 8,9–DHES as a concomitant component comprising at least 2 percent but not more than 6 percent of the estrogens in these products; and (3) not accept for filing or receive or approve any new drug application (NDA) or abbreviated new drug application (ANDA) for a conjugated estrogens product in which delta 8,9–DHES does not comprise at least 2 percent but not more than 6 percent of its estrogens. Amendments to the petition raised issues concerning the contribution of delta 8,9–DHES to the clinical effect of Premarin. FDA is inviting comments on this as well as any other issues raised in the citizen petition and amendments as well as on issues raised in comments received on the petition.

In addition, FDA has placed in the docket a document entitled ''Preliminary Analysis of Scientific Data on the Composition of Conjugated Estrogens'' which addresses some of the issues and data submitted in the citizen petition and amendments. This document presents the agency's preliminary analysis of certain currently available data relating to the contribution of estrone sulfate, equilin sulfate, and delta 8,9–DHES to the clinical effects of Premarin, including effects on bone mineral density. The document does not respond to the citizen petition nor does it announce any action with regard to any pending application or accepting any future application for a conjugated estrogens drug product or indication for use of such a product.

Interested persons may, on or before December 9, 1996, submit to the Dockets Management Branch (address above) written comments regarding materials submitted to the docket. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Materials related to the Wyeth-Ayerst citizen petition on conjugated estrogens and received comments may be seen in the office above between a.m. and 4 p.m., Monday through Friday. Comments submitted after December 9, 1996 may not be considered by the agency.

Dated: October 31, 1996.

William B. Schultz,

*Deputy Commissioner for Policy.*

[FR Doc. 96–28682 Filed 11–04–96; 3:24 pm]

**BILLING CODE 4160–01–F**

## Health Care Financing Administration

**[Document Identifier: HCFA–3427]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Survey Report Form (CLIA), and supporting regulations 42 CFR 493.1 through 493.1804; *Form No.:* HCFA–1557; *Use:* Clinical Laboratory Certification and Recertification: This survey form is an instrument used by the State agency to record data collected in order to determine compliance with CLIA; *Frequency:* Biennially; *Affected Public:* Business or other for profit, not for profit institutions, Federal government and State, local or tribal governments; *Number of Respondents:* 30,225; *Total Annual Hours:* 16,322.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Laboratory Personnel Report (CLIA) and supporting regulations 42 CFR 493.1 through 493.1804; *Form No.:* HCFA–209; *Use:* This form is used by the State agency to determine a laboratory's compliance with personnel qualifications under CLIA. This information is needed for a laboratory's CLIA certification and recertification; *Frequency:* Biennially; *Affected Public:* Business or other for profit, not for profit institutions, Federal, State, local or tribal governments; *Number of Respondents:* 26,250; *Total Annual Hours:* 13,125.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare/Medicaid Hospital Survey Report Form and supporting regulations 42 CFR 482.1 through 482.66; *Form No.:* HCFA–1537; *Use:* Section 1861(e) of the Social Security Act provides that hospitals participating in Medicare must meet specific requirements. These requirements are presented as conditions of participation. State agencies must determine compliance with these conditions through the use of this report form; *Frequency:* Annually; *Affected Public:* State, local or tribal governments; *Number of Respondents:* 1,322; *Total Annual Hours Requested:* 4,296.50.

4. *Type of Information Collection Request:* Reinstatement, with change, of previously approved collection for which approval has expired; *Title of Information Collection:* Medicare Managed Care Disenrollment Form; *Form No.:* HCFA–566; *Use:* This form is used to process a beneficiaries request of disenrollment action from a health maintenance organization or competitive medical plan and to update the beneficiaries' health insurance master record; *Frequency:* On occasion; *Affected Public:* Individuals and households, business or other for profit, not for profit institutions, Federal government, State, local, or tribal governments; *Number of Respondents:* 24,000; *Total Annual Responses:* 24,000; *Total Annual Hours:* 792.

5. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Ambulatory Surgical Center (ASC) Request for Certification and Survey Report and Supporting regulation 42 CFR 416; *Form*

*No.:* HCFA–377, HCFA–378; *Use:* The HCFA–377 is the application used by an ASC wanting to participate in the Medicare program. The HCFA–378 is the survey form used by State survey agencies to determine ASC compliance with individual conditions of coverage. 42 CFR 416 is the regulation supporting the data collected on the HCFA–377 and HCFA 378; *Frequency:* Annually; *Affected Public:* State, local, or tribal governments, business or other for profit, not-for-profit institutions; *Number of Respondents:* 1,900; *Total Annual Responses:* 1,900; *Total Annual Hours:* 475.

6. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Medigap Complaint Database and Supporting Regulation 42 CFR 403.210 (b); *Form No.:* HCFA-R–156; *Use:* The Medigap database is maintained by the National Association of Insurance Commissioners, which in turn, sends the Medigap-relevant data to HCFA. The information is used to monitor State handling of Medigap related complaints; *Frequency:* Quarterly; *Affected Public:* Business or other for-profit; *Number of Respondents:* 1; *Total Annual Responses:* 4; *Total Annual Hours:* 160.

7. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Comprehensive Outpatient Rehabilitation Facility (CORF) Eligibility and Survey Forms and Information Collection Requirements in 42 CFR 485.56, 485.58, 485.60; *Form No.:* HCFA–359, HCFA–360, HCFA–R–55; *Use:* In order to participate in the Medicare program as a CORF, providers must meet Federal conditions of participation. The certification form is needed to determine if providers meet at least preliminary requirements. The survey form is used to record provider compliance with the individual conditions and report findings to HCFA; *Frequency:* Annually; *Affected Public:* Business or other for profit, not for profit institutions, State, local, or tribal governments; *Number of Respondents:* 162; *Total Annual Responses:* 324; *Total Annual Hours:* 526 (reporting), 77,014 (record keeping).

To obtain copies of the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 28, 1996

Edwin J. Glatzel,

*Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.*

[FR Doc. 96–28621 Filed 11–6–96; 8:45 am]

**BILLING CODE 4120–03–P**

## Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Evaluation of the Ryan White HIV/AIDS Dental Reimbursement Program—Title 776(b) of the Public Health Service Act authorizes the Secretary to make grants to assist accredited dental schools and post-doctoral dental programs to meet uncompensated costs for providing oral health care to HIV infected individuals. A survey will be conducted to determine the effect this reimbursement program has had on the conduct of HIV/AIDS education and services within institutions and their graduates receiving these funds.

The survey will assess the effect the Program has had on (1) the support and commitment of institutions to HIV/AIDS education and the provision of care; (2) the scope, content and conduct of HIV/AIDS education in participating institutions, (3) increasing the access to oral health care by HIV/AIDS patients; and (4) improving the integration of oral health care with health care and long-term HIV/AIDS case management under other components of the Ryan White Act. The survey will compare dental schools and hospitals awarded Ryan White HIV/AIDS dental reimbursement monies with eligible institutions which did not participate in the reimbursement program. An initial mail questionnaire will be followed up by a telephone interview. The telephone interview will use Computer Assisted Telephone Interview (CATI) technology. Burden estimates are as follows:

| Form name | Number of respondents | Responses per respondent | Total responses | Hours per response | Total hour burden |
|---|---|---|---|---|---|
| Telephone Interview | 204 | 1 | 204 | .75 | 153 |
| Service Delivery/Program Questionnaire | 204 | 1 | 204 | 2.00 | 408 |
| Total | 204 | 2 | 408 | 1.375 | 561 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 30, 1996.

J. Henry Montes,

*Associate Administrator for Policy Coordination.*

[FR Doc. 96–28637 Filed 11–6–96; 8:45 am]

**BILLING CODE 4160–15–P**

### Availability of Funds to Provide Technical and Non-financial Assistance to Federally Funded Migrant Health Centers

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of availability of funds.

**CFDA** #: 93.129.

**SUMMARY:** The Health Resources and Services Administration (HRSA) anticipates that approximately $1.1 million will be available in FY 1997 to support two cooperative agreements for the purpose of providing technical and non-financial assistance to Migrant Health Centers (MHCs) receiving funding under Section 330(g) of the Public Health Service (PHS) Act.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting health priorities. These cooperative agreements are related to the objectives cited for special populations, particularly people with low income and minorities, which constitute a significant portion of the migrant and seasonal farmworker (MSFW) population. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (telephone 202/783–3238).

The PHS strongly encourages all cooperative agreement recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

**DATES:** Applications are due December 9, 1996. Applications will be considered to have met the deadline if they are: (1) received on/or before the deadline date; or (2) postmarked on/or before the deadline date and received in time for submission to the review committee. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing. Faxed copies of applications will not be accepted. Applications received after the announced closing date will not be considered for funding.

**ADDRESSES:** Application kits (PHS form 5161–1 with revised face sheets DHHS Form 424, as approved by the Office of Management and Budget (OMB) under control number 0937—0189), may be obtained from: HRSA Grants Application Center, Suite 100, 40 W. Gude Drive, Rockville, MD 20850. The telephone number is toll-free 1–888–300–HRSA. The e-mail address is HRSA.GAC@IX.NETCOM.COM. Completed applications for awards for the provision of technical and other non-financial assistance to MHCs must be sent to: HRSA Grants Application Center at the above address. For information on grants management issues, please contact the Grants Management Specialist, Nancy Benson, at 301/594–4232.

**FOR FURTHER INFORMATION CONTACT:** For general program information and information about these technical assistance funds, contact Jack Egan, Deputy Director, Migrant Health Program (MHP), 4350 East-West Highway, Room 7–4A2, Bethesda, MD 20814 (301) 594–4303 (JEGAN@HRSA.DHHS.GOV) or Susan Hagler at the same address and phone number (SHAGLER@HRSA.DHHS.GOV).

**SUPPLEMENTARY INFORMATION:** One cooperative agreement of up to $750,000 will be for a national clearinghouse on MSFW health issues. The ''clearinghouse'' grantee will provide technical assistance that helps MHCs increase access to health care for MSFWs. The grantee will develop such products as a MHC directory and a newsletter, establish a toll free health center referral line, and serve as a repository for MSFW health issues. The other cooperative agreement of up to $325,000 will be for a clinical network for clinicians serving MSFWs. The ''clinical network'' grantee will provide technical assistance that helps farmworker clinicians give the best possible care to MSFWs. The grantee will develop such products as a clinical newsletter, bilingual patient education materials, new provider orientation materials and will establish a network of clinical colleagues upon whom to call when needed. These cooperative agreements will be awarded under section 330(k) of the PHS Act (42 U.S.C. 254b (k)) with a budget period of one year and a project period of up to five years.

There are an estimated 3 to 5 million farmworkers in the United States who experience multiple health problems associated with the nature of farm labor and numerous barriers to accessing primary health care and human services. The health of MSFWs is a major concern of the U.S. Department of Health and Human Services (HHS). Section 330(k) of the PHS Act authorizes Federal funding for the provision of comprehensive primary health services, supplemental health services, referral to providers for supplemental services, environmental health services, accident prevention programs, and information on the availability and proper use of health services and services which promote optimal use of health services by MSFWs and their families. MHCs must provide services which are accessible, affordable, and appropriate for the population served.

Often, however, the staff of MHCs feel very isolated from each other and the health care environment in which they are working. MHCs are expected to be part of comprehensive systems of care through networking with local health departments and other providers of services in the community. Yet this can be a difficult task to accomplish, given the size of most MHCs. For this reason, the Bureau of Primary Health Care (BPHC) provides funding for technical and non-financial assistance for the MHCs.

The two grantees will help the MHCs keep abreast of the latest health issues facing MSFWs, both clinically and administratively. They will help the clinicians and administrators of the MHCs coordinate care and network resources for a population that is desperately in need. Finally, these grantees will provide MHCs with access to information and other MHCs so that together they can improve the health of MSFWs.

Eligible Applicants

Eligible applicants for the technical assistance cooperative agreement are public and private nonprofit entities.

Criteria for Evaluating Applications

Applications will be evaluated and rated on the applicant's ability to meet the following criteria:

(1) The extent to which the applicant demonstrates an adequate understanding of the total health needs of MSFWs;

(2) The extent to which the applicant demonstrates a capability to serve as a resource to federally funded Migrant Health Centers/Projects to maximize collaboration, identify and integrate resources in assisting farmworkers;

(3) Experience of the proposed project personnel in working with migrant farmworker health issues;

(4) The adequacy and appropriateness of the proposed work plan that addresses specific Migrant Health Program priorities and focuses on the outcomes as well as the methodology to be employed;

(5) Appropriateness of proposed budget and staffing;

(6) Adequacy of the proposal to evaluate the outcomes of the activities proposed; and

(7) The cost effectiveness of the application.

Federal Responsibilities Under Cooperative Agreements

Federal responsibilities under the cooperative agreement, in addition to the usual monitoring and technical assistance, will include: (1) Participation in the development and approval of an initial workplan, in accord with changing events in government policies and in the health care environment, and modification thereof, as appropriate; (2) consultation and cooperation with the grantee regarding the grantee's preparation and dissemination of materials; and (3) approval of specific studies and projects.

Other Award Information

These awards are not subject to the provision of Executive Order 12372 or the Public Health System Reporting Requirement.

Dated: November 1, 1996.

Ciro V. Sumaya,

*Administrator.*

[FR Doc. 96–28638 Filed 11–6–96; 8:45 am]

**BILLING CODE 4160–15–P**

## Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of December 1996.

*Name:* Advisory Commission on Childhood Vaccines (ACCV)

*Date and Time:* December 4, 1996; 10:00 a.m.–5:00 p.m. December 5, 1996; 9:00 a.m.–5:00 p.m.

*Place:* Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

The first day of the meeting, Tuesday, December 4, will consist of a meeting of one of the Commission's workgroups.

*Name:* Workgroup on Intent, Provisions and Process

*Agenda:* Agenda items will include, but not be limited to, discussion of the following issues: Program and policy issues related to the operation of the Vaccine Injury Compensation Program.

The full Commission will meet on Thursday, December 5, from 9:00 a.m. to 5:00 p.m. Agenda items will include, but not be limited to: A report from the Workgroup on Intent, Provision, and Process; a review of the proposed changes to the Vaccine Information Statements for polio and DTP (DTaP); and routine Program reports.

Public comment will be permitted before the end of the Workgroup meeting on December 4, as well as the full Commission meeting on December 5. Oral presentations will be limited to 5 minutes per public speaker.

Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Melissa Palmer, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–35, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–6593. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation Program will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign-up in Conference Rooms G & H on December 4–5. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Palmer.

Agenda Items are subject to change as priorities dictate.

Dated: November 4, 1996.

Jackie E. Baum,

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 96–28680 Filed 11–6–96; 8:45 am]

**BILLING CODE 4160–15–P**

## National Institutes of Health

## National Cancer Institute; Notice of Meeting of the National Cancer Advisory Board and Its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittees on November 18–20, 1996. Except as noted below, the meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 630E, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708), will provide summaries of the meetings and rosters of the Board members, upon request.

A portion of the Board meeting will be closed to the public in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation and discussion of issues pertaining to intramural programmatic areas and/or NCI personnel and discussion of recommendations regarding NCI staff. These discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning the individuals associated with the programs, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carole Frank, Committee Management Specialist, at 301/496–5708 in advance of the meeting.

*Name of Committee:* Policy and Advocacy Ad Hoc Subcommittee.

*Contact Person:* Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600A, 61030 Executive Blvd., Bethesda, MD 20892–7405; (301) 496–4291.

*Date of Meeting:* Nov. 18, 1996.

*Place of Meeting:* Conference Room 8, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* 7:00 pm to 8:00 pm.

*Agenda:* To discuss the role of the NCAB in advocacy activities and in advising NCI on extramural and intramural policy.

*Name of Committee:* Subcommittee on Clinical Investigations.

*Contact Person:* Dr. Robert E. Wittes, Acting Executive Secretary, National Cancer Institute, NIH, Building 31, Room 3A52, 9000 Rockville Pike, Bethesda, MD 20892; (301) 496–4291.

*Date of Meeting:* November 18, 1996.

*Place of Meeting:* Conference Room 8, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* 8:15 pm to 9:30 pm.

*Agenda:* To discuss clinical trials reimbursement issues.

*Name of Committee:* National Cancer Advisory Board.

*Contact Person:* Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600A, 6130 Executive Blvd., Bethesda, MD 20892–7405; (301) 496–5147.

*Dates of Meeting:* November 19–20, 1996.

*Place of Meeting:* Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* November 19—8:30 am to approximately 4 pm; November 20—8:30 am to approximately 1 pm.

*Agenda:* The NCI Director's Report; Legislative Update; Report of the President's Cancer Panel; Outcome of the NCAB Retreat and Chances in Subcommittee Structure; NCI Planning Principles and NCI Planning Retreat Outcomes; FY 99 Bypass Planning Procedures; New Business; Intercultural Cancer Council C-Chair Remarks; Program Review Group Reports; Report by the Office of Advisory Activities; Bishop-Calabresi Report Update; Cancer Genome Anatomy Project; Board of Scientific Counselors and Board of Scientific Advisors Activities and their interface with this Board; Subcommittee/Ad Hoc Subcommittee reports; and Integration of Biotechnology Development into NCI Programs.

*Closed:* November 19—4:00 pm to approximately 5 pm.

*Agenda:* For review and discussion of intramural programs and personnel.

This notice is being published less than 15 days prior to the meeting due to the urgent need to proceed with the meeting as scheduled in order to address these issues in a timely manner.

Catalog of Federal Domestic Assistance Program Numbers: (93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: October 30, 1996.

Paula N. Hayes,

*Acting Committee Management Officer, NIH.*

[FR Doc. 96–28632 Filed 11–6–96; 8:45 am]

**BILLING CODE 4140–01–M**

## National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Lymphangioleiomyomatosis Registry (Telephone Conference Call).

*Date:* December 5, 1996.

*Time:* 2:00 p.m. est.

*Place:* 6701 Rockledge Drive, Room 7220, Bethesda, Maryland 20892.

*Contact Person:* C. James Scheirer, Ph.D., 6701 Rockledge Drive, Room 7220, Bethesda, Maryland 20892–7220, (301) 435–0266.

*Purpose/Agenda:* To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: October 31, 1996.

Paula N. Hayes,

*Acting Committee Management Officer, NIH.*

[FR Doc. 96–28629 Filed 11–6–96; 8:45 am]

**BILLING CODE 4140–01–M**

## National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

*Agenda/Purpose:* To review and evaluate grant applications.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.

*Date:* November 12, 1996.

*Time:* 2 p.m.

*Place:* Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person:* Sheri L. Schwartzback, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–4843.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: October 31, 1996.

Paula N. Hayes,

*Acting Committee Management Officer, NIH.*

[FR Doc. 96–28624 Filed 11–6–96; 8:45 am]

**BILLING CODE 4140–01–M**

## National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Special Emphasis Panel meetings:

*Purpose/Agenda:* To evaluate and review grant applications.

*Name of Committee:* NIDA Special Emphasis Panel.

*Date:* November 14, 1996.

*Time:* 1:00 p.m.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Rita Liu, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

*Name of Committee:* NIDA Special Emphasis Panel.

*Date:* November 19–20, 1996.

*Time:* 9:00 a.m.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Khursheed Asghar, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

*Name of Committee:* NIDA Special Emphasis Panel.

*Date:* November 20, 1996.

*Time:* 8:30 a.m.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Mary C. Custer, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meetings will be closed in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Scientist Development, Research Scientist Development, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health)

Dated: October 31, 1996.

Paula N. Hayes,

*Acting Committee Management Officer, NIH.*

[FR Doc. 96–28625 Filed 11–6–96; 8:45 am]

**BILLING CODE 4140–01–M**

## National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Innovative Drug Discovery Research in AIDS Opportunistic Infections.

*Date:* November 15, 1996.

*Time:* 9:30 a.m.

*Place:* Georgetown Holiday Inn, 2101 Wisconsin Avenue, N.W., Washington, DC 20007, (202) 338–4600.

*Contact Person:* Dr. Paula Strickland, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C02, Bethesda, MD 20892–7610, (301) 402–0643.

*Purpose/Agenda:* To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research: 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: October 31, 1996.

Paula N. Hayes,

*Acting Committee Management Officer, NIH.*

[FR Doc. 96–28626 Filed 11–6–96; 8:45 am]

**BILLING CODE 4140–01–M**

## National Institute of Environmental Health Sciences; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Review of National Research Service Award Applications (T32s) (Telephone Conference Call).

*Date:* November 20, 1996.

*Time:* 1:00 p.m. est.

*Place:* National Institute of Environmental Health Sciences, North Campus, Building 17 Conference Room, Research Triangle Park, NC.

*Contact Person:* Dr. John Braun, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446.

*Purpose/Agenda:* To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: October 31, 1996.

Paula N. Hayes,

*Acting Committee Management Officer, NIH.*

[FR Doc. 96–28627 Filed 11–6–96; 8:45 am]

**BILLING CODE 4140–01–M**

## National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

*Agenda/Purpose:* To review and evaluate grant applications.

*Commitee Name:* National Institute of Mental Health Special Emphasis Panel.

*Date:* December 2, 1996.

*Time:* 1:30 p.m.

*Place:* Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person:* Sheri L. Schwartzback, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

*Commitee Name:* National Institute of Mental Health Special Emphasis Panel.

*Date:* December 3, 1996.

*Time:* 2 p.m.

*Place:* Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person:* Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3367.

*Commitee Name:* National Institute of Mental Health and Special Emphasis Panel.

*Date:* December 17, 1996.

*Time:* 9 a.m.

*Place:* The Latham Hotel Georgetown, 3000 M. Street, N.W., Washington, DC 20007.

*Contact Person:* Jean G. Noronha, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: October 31, 1996.

Paula N. Hayes,

*Acting Committee Management Officer, NIH.*

[FR Doc. 96–28628 Filed 11–6–96; 8:45 am]

**BILLING CODE 4140–01–M**

## National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

*Name of SEP:* National Cooperative Drug Discovery Groups for the Treatment of HIV Infection.

*Date:* November 14–15, 1996.

*Time:* 9:00 a.m.

*Place:* Bethesda Holiday Inn, Maryland Room, 8120 Wisconsin Avenue, Bethesda, MD 20814, (301) 652–2000.

*Contact Person:* Dr. Christopher Beisel, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C03, Bethesda, MD 20892–7610, (301) 402–4596.

*Purpose/Agenda:* To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: October 30, 1996.

Paula N. Hayes,

*Acting Committee Management Officer, NIH.*

[FR Doc. 96–28630 Filed 11–6–96; 8:45 am]

**BILLING CODE 4140–01–M**

## National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of General Medical Sciences Special Emphasis Panel (SEP) meeting:

*Committee Name:* Minority Access to Research Careers (MARC) and Minority Biomedical Research Support (MBRS) Special Emphasis Panel.

*Date:* November 20, 1996.

*Time:* 12:30 p.m.—adjournment.

*Place:* National Institutes of Health (Telephone Conference), 45 Center Drive, Room 1AS–13F, Bethesda, MD 20892–6200.

*Contact Person:* Helen R. Sunshine, Ph.D., Chief, Office of Scientific Review, NIGMS, 45 Center Drive, Room 1AS–13F, Bethesda, MD 20892–6200, 301–594–2881.

*Purpose:* To evaluate and review grant applications.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 193.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS], National Institute of General Medical Sciences, National Institutes of Health)

Dated: October 30, 1996.

Paula N. Hayes,

*Acting Committee Management Officer, NIH.*

[FR Doc. 96–28631 Filed 11–6–96; 8:45 am]

**BILLING CODE 4140–01–M**

## Prospective Grant of Exclusive License: Therapeutic Uses of Microtubule Stabilizing Agents Including Taxol (Paclitaxel) for Fibroproliferative Vascular Diseases Including Atherosclerosis and Restenosis and Excluding Cancer

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a worldwide, limited field of use, exclusive license to practice the inventions embodied in the patents and patent applications referred to below to Angiotech Pharmaceuticals Inc. of Vancouver, British Columbia, Canada. The patent rights in these inventions have been assigned to the government of the United States of America. The patents and patent applications to be licensed are: ''Methods of Treating Atherosclerosis or Restenosis Using Microtubule Stabilizing Agent,'' U.S. Patent Application Serial No. 08/099,067 filed July 29, 1993; and all continuation applications, divisional applications, continuation-in-part applications, and foreign counterpart applications related to U.S. Patent Application Serial No. 08/099,067.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days with the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**SUPPLEMENTARY INFORMATION:** Atherosclerosis is the cause of the vast majority of cases of chronic peripheral arterial occlusive disease. The arteries most frequently involved, in order of occurrence, include femoropopliteal-tibial, aortioiliac, carotid and vertebral, splanchnic and renal, and brachycephalic. Fibromuscular dysplasia, inflammatory arteridities, and congenital arterial malformations are much rarer causes of arterial insufficiency. The process of repair after angioplasty continues over several months, involving re-endothelialization, proliferation of vascular smooth muscle cells, and remodelling of the extracellular matrix proteins. Restenosis, the natural regrowth of muscle cells, has been noted as the single greatest complication (30–50%) of interventional intravascular procedures which number approximately 500,000 procedure annually, and at $10,000 per procedure is costing the health care system approximately $5 billion annually. While both interventional and invasive treatments continue to improve, restenosis causes a first-time failure rate of up to 50% or more. Reduction in the restenosis rate for cardiovascular disease procedures is cited as the most critical factor in future improvements. If the rate could be reduced to 25%, it would represent a savings to the health care system of around $1 billion annually.

Preventing or reducing fibroproliferative vascular disease in a patient may be achieved by treating the patient with a pharmaceutical preparation comprising a therapeutically effective amount of a microtubule stabilizing chemotherapeutic agent such as taxol (placlitaxel). In particular, treatment with a low dose of a microtubule stabilizing agent such as taxol or a water-soluble taxol derivative may present or reduce atherosclerosis or restenosis after arterial injury. The low dose used prevents artery blockage while minimizing any negative side effects associated with the drug. Unlike classical anti-microtubule agents like colchicine and the vinca alkaloids which induce depolymerization of microtubules, taxol induces tubulin polymerization and forms extremely stable and nonfunctional microtubules.

**ADDRESS:** Requests for a copy of these patent applications, inquiries, comments, and other materials relating to the contemplated license should be directed to: J. Peter Kim, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301) 496–7056, ext. 264; Facsimile: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive a copy of any pending patent application. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH on or before February 5, 1997 will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 29, 1996.

Barbara M. McGarey,

*Deputy Director, Office of Technology Transfer.*

[FR Doc. 96–28633 Filed 11–6–96; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain

activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–821701

Applicant: Moscow Circus, New York, NY.

The applicant requests a permit to import and re-export leopards (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notificatation covers activities conducted by the applicant over a three year period.

PRT–821553

Applicant: Saint Louis Zoological Park, St. Louis, MO.

The applicant requests a permit to import a total of three tissue samples and 15 blood samples collected from three clouded leopards (*Neofelis nebulosa*) held in captivity at the Toronto Zoo, Toronto, Canada, to enhance the survival of the species through scientific research.

PRT–821192

Applicant: Sacramento Zoo, Sacramento, CA.

The applicant requests a permit to import one, captive born, female snow leopard (*Panthera uncia*) from the Valley Zoo, Alberta, Canada for enhancement of the survival of the species through captive propagation and education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

*Applicant:* Chicago Zool. Park, Brookfield Zoo, Brookfield, PRT–821744.

*Type of Permit:* Import for public display.

*Name and Number of Animals:* Pacific walrus (*Odobenus rosmarus*), 3.

*Summary of Activity to be Authorized:* The applicant has requested a permit to import from Sweden for the purpose of public display three juvenile walrus initially collected from the wild in the area of the Chukotskiy Penninsula, Russia.

*Source of Marine Mammals for Research/Public Display:* Sweden.

*Period of Activity:* Up to five years from issuance of a permit, if issued.

Concurrent with the publication of this notice in the Federal Register, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: November 1, 1996.

Maryellen Amtower,

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 96–28590 Filed 11–6–96; 8:45 am]

**BILLING CODE 4310–55–P**

## Bureau of Land Management

**[MT–070–96–00]**

## Resource Advisory Council Meeting, Butte, MT

**AGENCY:** Butte District Office, Bureau of Land Management, D.O.I.

**ACTION:** Notice of Butte District Resource Advisory Council Meeting, Butte, Montana.

**SUMMARY:** The Council will convene at 9 a.m. Wednesday, December 4, 1996. Issues that will be discussed include the draft Standards and Guidelines Environmental Impact Statement/ Resource Advisory Council (RAC) participation at the open houses and prioritizing future RAC issues.

The meeting will be held at the District Office Conference Room, 106 North Parkmont, Butte, Montana.

The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 3 p.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or need special assistance, such as sign language or other reasonable accommodations, should contact the Butte District, 106 North Parkmont (P.O. Box 3388), Butte, Montana 59702–3388; telephone 406–494–5059.

**FOR FURTHER INFORMATION CONTACT:** Jim Owings at the above address or telephone number.

Dated: October 28, 1996.

Orval L. Hadley,

*Acting District Manager.*

[FR Doc. 96–28620 Filed 11–6–96; 8:45 am]

**BILLING CODE 4310–DN–M**

**[CA–060–07–1990–00]**

## Meeting of the California Desert District Advisory Council

**SUMMARY:** Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session on Thursday, December 5 from 8:00 a.m. to 5:00 p.m. and Friday, December 6, 1996, from 8:00 a.m. to 4:00 p.m. The Friday session will be held in the conference room in the Vacation Inn, located at 2000 Cottonwood Circle, El Centro, California.

Council members will participate in a field tour on Thursday morning. The tour will assemble at the Vacation Inn parking lot at 7:15 a.m., and depart at 7:30 a.m. The public is welcome to participate in the field tour, but should dress appropriately and plan on providing their own transportation, food, and beverage. Anyone interested in participating in the field tour should contact BLM at (909) 697–5215 for more information.

The Friday meeting will begin at 8 a.m. in the upstairs conference room at the Vacation Inn. All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the

California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

**FOR FURTHER INFORMATION AND MEETING CONFIRMATION:**
Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714; (909) 697–5215.

Dated: October 31, 1996.

Jo Simpson,

*Asst. District Manager, External Affairs.*

[FR Doc. 96–28636 Filed 11–6–96; 8:45 am]

**BILLING CODE 4310–01–M**

**[AK–040–1410–00; AA–77671]**

## Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Alaska

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice.

**SUMMARY:** The following public lands on Fort Richardson Army Base, near Anchorage, Alaska, have been examined and found suitable for classification and opening under the provisions of the Recreation and Public Purposes Act, as amended 943 U.S.C. 869 *et seq.*)

Seward Meridian, Alaska

T. 13 N., R. 2 W.,
Sec. 5, metes and bounds.
Containing 8.75 acres, more or less.

This action is a motion by the Bureau of Land Management to make available lands identified in EA No. AK–040–96–027, as not needed for Federal purposes and required by the Municipality of Anchorage, Anchorage School District as site of the Ursa Major Elementary School. Lease of the site for recreation or public purpose use would be in the public interest. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Anchorage District, 6881 Abbott Loop Road, Anchorage, Alaska. Lease of the lands would be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed classification of the lands to the District Manager, Anchorage District Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599. Any adverse comment will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for a school facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedure in reaching the decision, or any other factor not directly related to the suitability of the land for a school facility.

**FOR FURTHER INFORMATION CONTACT:**
Dennis R. Benson, BLM, Anchorage District Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599, (907) 267–1212.

Dated: October 22, 1996.

Nicholas Douglas,

*District Manager.*

[FR Doc. 96–28623 Filed 11–6–96; 8:45 am]

**BILLING CODE 4310–JA–M**

**[OR 53113–53117; OR–080–07–1430–01: G7–0010]**

## Realty Action; Proposed Modified Competitive Sale

October 28, 1996.

The following described public lands have been examined and determined to be suitable for transfer out of Federal ownership by modified competitive sale under the authority of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oregon,

T. 5 S., R. 6W.,
Sec. 11, Lot 6 (OR 53113)
Sec. 11, Lot 7 (OR 53114)
Sec. 11, Lot 8 (OR 53115)
Sec. 11, Lots 9 and 10 (OR 53116)
Sec. 11, Lots 11 and 12 (OR 53117)

The above-described parcels aggregate 6.45 acres in Yamhill County.

The parcels will not be offered for sale until at least 60 days after publication of this notice in the Federal Register. The fair market value of the parcels have not yet been determined. Anyone interested in knowing the values may request this information from the address shown below.

The above-described lands are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the Federal Register, whichever occurs first.

The parcels are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. The sale is consistent with the Salem District Resource Management Plan and the public interest will be served by offering these parcels for sale.

Modified Bidding Procedures

Modified bidding procedures are being used pursuant to 43 CFR 2711.3–2. Use of modified competitive sale procedures will avoid an inappropriate land ownership pattern.

The parcel identified as OR 53113 is being offered only to Sydenham Trust (fee owner of Tax Lot 100, Map 5 6 11) and Stimson Lumber Company (fee owner of Tax Lot 500, Map 5 6 12).

The parcel identified as OR 53114 is being offered only to Sylvia R. Post (fee owner of Tax Lot 2100, Map 5 6 11) and Stimson Lumber Company (fee owner of Tax Lot 500, Map 5 6 12).

The parcel identified as OR 53115 is being offered only to Sylvia R. Post (fee owner of Tax Lot 2100, Map 5 6 11) and Morrow Forest Products, Inc. (fee owner of Tax Lot 600, Map 5 6 12).

The parcel identified as OR 53116 is being offered only to Vern G. Clemmer and Charlotte Clemmer (fee owners of Tax Lot 200, Map 5 6 11) and Morrow Forest Products, Inc. (fee owner of Tax Lot 600, Map 5 6 12).

The parcel identified as OR 53117 is being offered only to Dwight D. Hall (fee owner of Tax Lot 300, Map 5 6 11), Morrow Forest Products, Inc. (fee owner of Tax Lot 600, Map 5 6 12), and Merle and Marla R. Wright (fee owners of Tax Lot 200, Map 5 6 14).

The terms, conditions, and reservations applicable to the sale are as follows:

1. Bidders must be United States citizens and 18 years of age or older. Proof of citizenship shall accompany the bid.

2. Sealed written bids, delivered or mailed, must be received by the Bureau of Land Management, Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306, prior to 11:00 a.m. on Wednesday, January 29, 1997. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to USDI—Bureau of Land Management for not less than the appraised value of the parcel to be sold. The sealed bid envelopes must be clearly marked in the lower left hand corner, ''Bid for Public Land Sale OR 53—''. The written sealed bids will be opened and the high bid will be declared at the sale.

3. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with Section 209 of the Federal Land Policy and Management Act. A nonrefundable $50.00 filing fee will be required from the prospective purchaser for purchase of the mineral estate.

4. The patents will be subject to:

a. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945; and

b. All valid existing rights and reservations of record.

Detailed information concerning the sale is available for review at the Salem District Office, address above, or at the Tillamook Resource Area Office, P.O. Box 404 (4610 Third Street), Tillamook, Oregon 97141.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Tillamook Area Manager, address above. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

[FR Doc. 96–28622 Filed 11–6–96; 8:45 am]

BILLING CODE 4310–33–M

## DEPARTMENT OF INTERIOR

### Bureau of Land Management

**[CA–017–1920–00–4686]**

### Proposed Resource Area Management Plan Amendment, Bishop Resource Area, California

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of Proposed Plan Amendments to the Bishop Resource Management Plan.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969 (NEPA), the Federal Land Policy and Management Act of 1976 (FLPMA) and the Code of Federal Regulations (40 CFR 1501.7, 43 CFR 1610.5–5), notice is hereby given that the Bureau of Land Management (BLM) proposes two plan amendments to the Bishop Resource Area Management Plan.

The first proposed plan amendment would correct the administrative status and release from further wilderness review eight Section 202 Wilderness Study Areas (WSAs) in the Bishop Resource Area. The WSAs would no longer be managed under Wilderness Interim Management Policy and would be subject to prescriptions in the Bishop Resource Management Plan (1993).

The second proposed plan amendment would identify a parcel of land in Inyo County, CA for disposal to the Los Angeles Dept. of Water and Power as part of the land exchange to acquire the Manzanar National Historic Site. The parcel, known as the Owens River parcel, is 259.03 acres. In addition, the proposed Manzanar exchange includes one of the Section 202 WSA parcels to be released from wilderness review.

**SUPPLEMENTARY INFORMATION:** The eight WSAs are comprised of twenty-seven separate parcels. On their own merit, none qualify for wilderness study. All but one parcel is less than 5,000 acres, which is the minimum required for wilderness study. This one exception fails to meet the outstanding opportunities criterion for solitude or primitive and unconfined types of recreation which is also required for wilderness study status.

In 1979–80, the eight areas were designated as WSAs in association with adjoining Forest Service WSAs. The BLM areas met the criteria for wilderness study status *only* because they were considered in combination with adjacent Forest Service WSAs. The Forest Service has subsequently removed their WSAs from wilderness study status. The recent Forest Service action has compelled the Bureau to undertake a plan amendment to release the eight WSAs from further wilderness study.

The Section 202 WSAs to be released lie in Inyo and Mono Counties. Several contain multiple land parcels. The WSAs include the following:

1. CA–010–060—Paiute WSA—(3 parcels)
2. CA–010–063—Coyote Southeast WSA—(6 parcels)
3. CA–010–065—Black Canyon WSA—(3 parcels)
4. CA–010–068—Wheeler Ridge WSA—(2 parcels)
5. CA–010–072—Laurel-McGee WSA—(1 parcel)
6. CA–010–075—White Mountain WSA—(9 parcels)
7. CA–010–077—Benton Range WSA—(2 parcels)
8. CA–010–103—Sweetwater WSA—(1 parcel)

The Owens River parcel, identified for inclusion in the Manzanar Land Exchange is located in Inyo County, east of the Owens River, and south of Tinemaha Reservoir. The legal description is: T.11S, R.35E., Sec. 30, Lots 5, 8, 9, 12, and 13; Sec. 31, Lots 9, 12, 13, 16, 17, 20, SE¼NW¼. The area measures 259.03 acres.

The Bishop Resource Area will send out copies of the amendment(s) if requested. Review copies of the document(s) are available at public libraries in the communities of Lone Pine, Independence, Bishop, Mammoth Lakes, and Bridgeport.

**DATES:** These proposed plan amendments may be protested only by parties who participated in the process. Protests must be sent to the Director (480), Bureau of Land Management , Resource Planning Team, 1849 C Street, N.W., Washington D.C. 20240. Protests must be postmarked within 30 days of the date of this proposed decision. Protests must minimally contain the following information: (1) The name, mailing address, telephone number, and interest of the person filing the protest; (2) A statement of the issue or issues being protested; (3) A statement of the

part or parts being protested; (4) A copy of all documents addressing the issue(s) for the record; and (5) A concise statement why you believe the BLM State Director's decision is incorrect.

At the end of the 30 day protest period, the proposed plan amendments excluding any portion under protest, will become final. Approval will be withheld on any portion of the plan under protest until final action has been completed on such protest.

**FOR ADDITIONAL INFORMATION CONTACT:** Genivieve D. Rasmussen, Bishop Resource Area, 785 N. Main., Ste E, Bishop, CA 93514. Telephone (619) 872–4881.

Genivieve D. Rasmussen,

*Area Manager, Bishop Resource Area.*

[FR Doc. 96–27675 Filed 11–6–96; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

**SUMMARY:** The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR Section 1501.4 and Section 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice. The acronym ''NORM'' means Naturally Occurring Radioactive Materials.

| Activity/Operator | Location | Date |
|---|---|---|
| Vastar Resources, Inc., NORM Disposal Operations, NORM No. 155A. | High Island Area, Block A–23, Lease OCS–G 13330, 38 miles southeast of Chambers County, Texas. | 6/21/96 |
| Vastar Resources, Inc., NORM Disposal Operations, NORM No. 156. | Main Pass Area, Block 306 Lease OCS–G 1667, 26 miles east of Plaquemines Parish, Louisiana. | 7/02/96 |
| Chevron U.S.A., Inc., NORM Disposal Operations, NORM No. 96–157. | Eugene Island Area, Block 238, Lease OCS 0982, 50 miles southeast of Terrebonne Parish, Louisiana. | 9/23/96 |
| Union Pacific Resources, NORM Disposal Operations, NORM No. 158. | Brazos Area, Block A–2, Lease OCS–G 9025, 34 miles southeast of Matagorda County, Texas. | 9/27/96 |
| Oryx Energy Company, Pipeline Activity, SEA Nos. P–11089 and P–11090. | High Island Area, East Addition, South Extension, Blocks A–385 and A–384, Leases OCS–G 10311 and 3316, 112 miles southeast of the nearest coastline in Texas. | 8/30/96 |
| Oryx Energy Company, Pipeline Activity, SEA Nos. P–11114 through P–11116. | High Island Area, East Addition, South Extension, Block A–379, Lease OCS–G 13808, 110 miles southeast of the nearest coastline in Texas. | 9/10/96 |
| Texaco Pipeline, Inc., Pipeline Activity, SEA No. G–14299 ..... | High Island Area, East Addition, South Extension, Blocks A–397, A–380, A–361, A–360, A–359, A–546, and A–521, Lease G–14299, 106 miles southeast of the nearest coastline off Texas. | 9/27/94 |
| Poseidon Pipeline Company, L.L.C., Pipeline Activity, SEA Nos. G–15019A and G–15024A. | Garden Banks Area; Blocks 72, 28, and 29; Vermilion Area, South Addition; Blocks 408, 407, 392, 393, 394, 395, 396, 397, 398, and 399; South Marsh Island Area, South Addition; Blocks 183, 184, 185, 186, 187, 188, 193, 192, 205, 190, and 191; Eugene Island Area, South Addition; Blocks 393, 380, 381, 382, 383, 374, 373, 372, 371, 370, 369, and 368; and Ship Shoal Area; Blocks 344, 345, 346, 347, 348, 360, 359, 358, 357, 351, 352, 353, 354, 333, and 322; Leases Nos. G–15019 and G–15024; 66 to 133 miles south of the nearest coastline in Louisiana. | 7/12/96 |
| Poseidon Oil Pipeline Company, L.L.C., Pipeline Activity, SEA No. G–16004. | Ship Shoal Area; Blocks 332, 331, 308, and 307; South Timbalier Area; Blocks 272, 271, 244, 245, 242, 241, 218, 213, 212, 200, 201, 192, 173, 164, 145, 108, 103, 94, 79 and, 70; South Pelto Area; Blocks 25, 16, 15, 6, and 5; and South Timbalier Area; Block 11; Lease G–16004 approximately 3 to 63 miles south of the nearest coastline in Louisiana. | 6/10/96 |
| Amoco Pipeline Company, Pipeline Activity, SEA No. G–16048E | Main Pass Area, Blocks 225, 248, 247, 246, 245, 244, 264, 265, 266, 267, 268, 269, 274, 273, 272, 145, 144, 143, 142, 141, 140, 147, 73, 72, 71, 70, 63, and 69 (Federal/State portion), Lease G–16048, 4 to 60 miles east of the nearest coastline off Louisiana. | 7/12/96 |
| Oryx Energy Company, Exploration Activity, SEA No. N–5114 ..... | High Island Area, East Addition, South Extension, Block A–386, Lease OCS–G 14925, 117 miles southeast of the nearest coastline on Galveston Island, Texas. | 10/17/95 |
| Oryx Energy Company, Exploration Activity SEA No. N–5297A ... | High Island Area, East Addition, South Extension, Block A–377, Lease OCS–G 15821, 114 miles southeast of the nearest coastline on Galveston Island, Texas. | 3/28/96 |
| Oryx Energy Company, Exploration Activity, SEA No. 3718U ..... | High Island Area, East Addition, South Extension, Block A–385, Lease OCS–G 10311, 116 miles southeast of the nearest coastline on Galveston Island, Texas. | 8/31/95 |

| Activity/Operator | Location | Date |
|---|---|---|
| Oryx Energy Company, Development Activity, SEA No. S–3852UB. | High Island Area, East Addition, South Extension Blocks A–385 and A–397, Leases OCS–G 10311 and 13809, 116 miles southeast of the nearest coastline on Galveston Island, Texas. | 7/25/96 |
| Oryx Energy Company, Development Activity, SEA No. S–4004U | High Island Area, East Addition, South Extension, Block A–379, Lease OCS–G 13808, 110 miles southeast of the nearest coastline on Galveston Island, Texas. | 8/28/96 |
| Kerr-McGee Corporation, Structure Removal Operations, SEA No. ES/SR 96–02/UC. | Eugene Island Area, Block 179, Lease OCS–G 8443, 55 miles south of St. Mary Parish, Louisiana. | 7/18/96 |
| The Louisiana Land Exploration Company, Structure Removal Operations, SEA Nos. ES/SR 96–035A and 96–036A. | Vermilion Area, Block 109, Lease OCS–G 6663, 29 miles south of Vermilion Parish, Louisiana. | 8/22/96 |
| Louisiana Land and Exploration Company, Structure Removal Operations, SEA Nos. ES/SR 96–035B and 96–036B. | Vermilion Area, Block 109, Lease OCS–G 6663, 24 miles south of Vermilion Parish, Louisiana. | 9/09/96 |
| Santa Fe Energy Resources, Inc., Structure Removal Operations, SEA No. ES/SR 96–051. | Galveston Area, Block 418, Lease OCS–G 8553, 22 miles south-east of Brazoria County, Texas. | 4/12/96 |
| UNOCAL Corporation, Structure Removal Operations, SEA Nos. ES/SR 96–072 and 96–074. | Vermilion Area, Block 26, Lease OCS 0297, 25 miles southwest of Intracoastal City, Louisiana. | 9/16/96 |
| Union Oil Company of California, Structure Removal Operations, SEA No. ES/SR 96–073A. | Vermilion Area, Block 39, Lease OCS 0206, 33 miles southwest of Intracoastal City, Louisiana. | 5/30/96 |
| Amerada Hess Corporation, Structure Removal Operations, SEA No. ES/SR 96–78A. | Vermilion Area, South Addition, Block 310, Lease OCS–G 3400, 87 miles south of Vermilion Parish, Louisiana. | 8/23/96 |
| Amoco Production Company, Structure Removal Operations, SEA Nos. ES/SR 96–081 and 96–082. | Eugene Island Area, Block 76, Leases OCS–G 3571 and 4242, 15 to 70 miles south of Plaquemines Parish, Louisiana. | 7/29/96 |
| Amoco Production Company, Structure Removal Operations, SEA Nos. ES/SR 96–083 and 96–084. | East Cameron Area, Block 221, Lease OCS–G 5383, 64 miles southwest of Vermilion Parish, Louisiana. | 7/25/96 |
| The Louisiana Land and Exploration Company, Structure Removal Operations, SEA Nos. ES/SR 96–87, through 96–89. | Eugene Island Area, Block 43, Lease OCS–G 3561, 36 miles southwest of Berwick, Louisiana. | 8/28/96 |
| Pogo Producing Company, Structure Removal Operations, SEA No. ES/SR 96–090. | Ship Shoal Area, Block 256, Lease OCS–G 11990, 50 miles south of Terrebonne Parish, Louisiana. | 9/06/96 |
| Pogo Producing Company, Structure Removal Operations, SEA No. ES/SR 96–090A. | Ship Shoal Area, Block 256, Lease OCS–G 11990, 50 miles south of Terrebonne Parish, Louisiana. | 9/16/96 |
| Newfield Exploration Company, Structure Removal Operations, SEA Nos. ES/SR 96–091, 96–092, 96–122, and 96–123. | West Cameron Area, Block 109, Lease OCS–G 7601, 18 miles south of Cameron Parish, Louisiana. | 6/03/96 |
| Amoco Production Company, Structure Removal Operations, SEA No. ES/SR 96–097. | Eugene Island Area, South Addition, Block 367, Lease OCS–G 2618, 90 miles south of Terrebonne Parish, Louisiana. | 9/18/96 |
| Amoco Production Company, Structure Removal Operations, SEA No. ES/SR 96–098. | West Cameron Area, South Addition, Block 563, Lease OCS–G 3284, 104 miles south of Cameron Parish, Louisiana. | 9/17/96 |
| Exxon Company, U.S.A., Structure Removal Operations, SEA Nos. ES/SR 96–100A and 96–101. | West Delta Area, Block 42, Lease OCS–G 1495, 13 miles south of Plaquemines Parish, Louisiana. | 7/24/96 |
| Samedan Oil Corporation, Structure Removal Operations, SEA Nos. ES/SR 96–104 through 96–106. | Eugene Island Area, Blocks 247 and 248, Leases OCS–G 1888 and 5506, 92 miles south of St. Mary Parish, Louisiana. | 8/01/96 |
| Texaco Exploration and Production, Inc., Structure Removal Operations, SEA Nos. ES/SR 96–111 through 96–113. | South Marsh Island Area, Blocks 218 and 219, Lease OCS 0310, 10 miles south of Vermilion Parish, Louisiana. | 7/16/96 |
| Texaco Inc., Structure Removal Operations, SEA Nos. ES/SR 96–114 through 96–119. | Vermilion Area, Block 31, Lease OCS–G2868, 10 miles south of Vermilion Parish, Louisiana. | 9/12/96 |
| Amerada Hess Corporation, Structure Removal Operations, SEA Nos. ES/SR96–131 and 96–132. | Eugene Island Area, Block 10, Lease OCS–G 2892, 10 miles south of St. Mary Parish, Louisiana. | 8/27/96 |
| UNOCAL Corporation, Structure Removal Operations, SEA No. ES/SR 96–133. | Eugene Island Area, Block 32, Lease OCS 0196, 5 miles south-west of St. Mary Parish, Louisiana. | 7/24/96 |
| Shell Offshore Inc., Structure Removal Operations, SEA No. ES/SR 96–134A. | West Cameron Area, Block 367, Lease OCS–G 13841, 59 miles south of Cameron Parish, Louisiana. | 8/06/96 |
| Shell Offshore, Inc. Structure Removal Operations, SEA No. ES/SR 96–141. | Vermilion Area, Block 144, Lease OCS–G 3125, 39 miles south of Vermilion Parish, Louisiana. | 7/25/96 |
| Shell Offshore, Inc., Structure Removal Operations, SEA No. ES/SR 96–141A. | Vermilion Area, Block 144, Lease OCS–G 3125, 39 miles south of Vermilion Parish, Louisiana. | 8/09/96 |
| Chevron U.S.A., Structure Removal Operations, SEA No. ES/SR 96–142. | Main Pass Area, Block 297, Lease OCS–G 5730, 40 miles east of Venice, Louisiana. | 8/22/96 |
| DelMar Operating, Inc., Structure Removal Operations, SEA No. ES/SR 96–143. | Eugene Island Area, Block 343, Lease OCS–G 2320, 76 miles southwest of Terrebonne Parish, Louisiana. | 7/25/96 |
| Amerada Hess Corporation, Structure Removal Operations, SEA No. ES/SR 96–144. | Breton Sound Area, Block 54, Lease OCS–G 4491, 59 miles east north-east of Fourchon, Louisiana. | 8/08/96 |
| Amoco Production Company, Structure Removal Operations, SEA Nos. ES/SR 96–145 and 96–146. | Ship Shoal Area, Block 176, and Eugene Island Area, Block 186, Leases OCS 0589 and OCS–G 10735, 40 miles southwest of Terrebonne Parish, Louisiana. | 7/18/96 |
| Phillips Petroleum Company, Structure Removal Operations, SEA Nos. ES/SR 96–147 and 96–148. | High Island Area, Block 154, Lease OCS–G 2357, 23 miles east of Galveston, Texas. | 9/12/96 |
| Walter Oil and Gas Corporation, Structure Removal Operations, SEA No. ES/SR 96–149. | Matagorda Island Area, Block 557, Lease OCS–G 4137, 14 miles south of Matagorda County, Texas. | 8/07/96 |
| Walter Oil and Gas Corporation, Structure Removal Operations, SEA No. ES/SR 96–150. | Matagorda Island Area, Block 557, Lease OCS–G 4137, 11 miles southeast of Matagorda County, Texas. | 7/31/96 |
| Walter Oil and Gas Corporation, Structure Removal Operations, SEA No. ES/SR 96–151. | Eugene Island Area, Block 239, Lease OCS–G 14473, 54 miles south of St. Mary Parish, Louisiana. | 7/24/96 |
| UMC Petroleum Corporation, Structure Removal Operations, SEA No. ES/SR 96–152. | High Island Area, Block 93, Lease OCS–G 11352, 14 miles south-southeast from the Texas coastline. | 8/21/96 |

| Activity/Operator | Location | Date |
|---|---|---|
| Texaco Exploration and Production, Inc., Structure Removal Operations, SEA No. ES/SR 96–153. | High Island Area, Block 138, Lease OCS–G 2680, 22 miles south of Jefferson County, Texas. | 9/06/96 |
| Devon Energy Corporation, Structure Removal Operations, SEA No. ES/SR 96–154. | Eugene Island Area, Block 164, lease OCS–G 4864, 39 miles south of St. Mary Parish, Louisiana. | 8/15/96 |
| Texaco Exploration and Production Inc., Structure Removal Operations, SEA No. ES/SR 96–155. | South Marsh Island Area, Block 212, Lease OCS 0310, 5 miles southwest of Iberia Parish, Louisiana. | 8/12/96 |
| Samedan Oil Corporation, Structure Removal Operations, SEA Nos. ES/SR 96–156 and 96–157. | West Delta Area, Block 33, Lease OCS–G 5670, 10 miles south of Plaquemines Parish, Louisiana. | 9/06/96 |
| Amerada Hess Corporation, Structure Removal Operations, SEA No. ES/SR 96–158. | Main Pass Area, Block 107, Lease OCS–G 12087, 42 miles northeast of Venice, Louisiana. | 9/18/96 |
| Chevron U.S.A., Structure Removal Operations, SEA No. ES/SR 96–159. | South Timbalier Area, Block 24, Lease OCS 0387, 6 miles southeast of Lafourche Parish, Louisiana. | 8/27/96 |
| W&T Offshore, Inc., Structure Removal Operations, SEA No. ES/SR 96–163. | Brazos Area, Block 507, Lease OCS–G 13301, 55 miles east of Port O'Connor, Texas. | 9/27/96 |
| Oryx Energy Company, Structure Removal Operations, SEA No. ES/SR 96–164. | High Island Area, Block 129, Lease OCS–G 1848, 28 miles south of Jefferson County, Texas. | 9/09/96 |
| Burlington Resources Offshore Inc., Structure Removal Operations, SEA No. ES/SR 96–165. | Vermilion Area, Block 172, Lease OCS–G 13884, 46 miles south of Vermilion Parish, Louisiana. | 9/23/96 |

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

**FOR FURTHER INFORMATION CONTACT:**

Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

**SUPPLEMENTARY INFORMATION:** The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: October 30, 1996.

J. Michael Melancon,

*Acting Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 96–28677 Filed 11–6–96; 8:45 am]

**BILLING CODE 4310–MR–M**

## National Park Service

### Fiscal Year 1997 Historic Preservation Fund Grants to Indian Tribes, Alaska Natives, and Native Hawaiians

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability of grant funds.

The Tribal Preservation Program of the National Park Service invites applications for Fiscal Year 1997 Historic Preservation Fund Grants to Indian Tribes, Alaska Natives, and Native Hawaiians. Federally recognized Indian tribes are encouraged to submit proposals to protect historic properties and cultural traditions under the authority of the National Historic Preservation Act, as amended. For more information and/or a copy of the Application and Guidelines, contact Ronnie Emery, Tribal Preservation Program, Heritage Preservation Services, National Park Service, P.O. Box 37127, Washington, DC 20013–7127; (202) 343–4280 voice; (202) 343–6004 fax; or visit the Tribal Preservation Program's World Wide Web Page at http://www.cr.nps.gov/ppb/tribal/index.htm.

Joe Wallis,

*Acting Chief, Office of State, Local, and Tribal Programs.*

[FR Doc. 96–28679 Filed 11–06–96; 8:45 am]

**BILLING CODE 4310–70–P**

## Bureau of Reclamation

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Information collection submitted to the Office of Management and Budget for review Under the Paperwork Reduction Act.

**SUMMARY:** The proposal for the revised collection of information listed below has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Copies of this information collection and the supporting documentation may be obtained by contacting Reclamation's Clearance Officer at the telephone number listed below. Comments on this information collection should be made within 30 days directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Bureau of Reclamation, Paperwork Reduction Project (1006–0014), Washington, DC 20503, Telephone (202) 395–7340.

*Title:* Lower Colorado River Well Inventory.

*Abstract:* The Bureau of Reclamation desires to inventory wells along the lower Colorado River to ensure that all Colorado River water use conforms to applicable laws and regulations and is accurately accounted for. This will affect every well owner and operator along the lower Colorado River in Arizona, California, and Nevada.

*OMB Approval Number:* 1006–0014. Reclamation will display a valid OMB control number on the form. Persons who are required to respond to the

information collection need not respond unless the OMB control number is current.

*Frequency:* This information will be collected only once for each well as long as changes in water use, or other changes that would impact water use entitlement management, are not made.

*Description of Respondents:* Every well owner and operator along the lower Colorado River in Arizona, California, and Nevada.

*Estimated Number of Respondents:* 1,000.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Annual Responses:* 1,000.

*Estimated Total Annual Burden on Respondents:* 500 hours.

*Reclamation's Clearance Officer:* Marilyn Rehfeld (303) 236–0305 extension 459.

No comments were received on this information collection as requested in Federal Register notice 61 FR 31950, June 21, 1996.

Dated: October 3, 1996.

Blaine Hamann,

*Assistant Regional Director.*

[FR Doc. 96–28674 Filed 11–6–96; 8:45 am]

BILLING CODE 4310–94–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 C.F.R. 50.7, and Section 122 of CERCLA, 42 U.S.C. § 9622, notice is hereby given that on October 29, 1996, a proposed Partial Consent Decree in *United States* v. *Metallics, Inc.*, Civil Action No. 96–C–0275–S, was lodged with the United States District Court for the Western District of Wisconsin. This consent decree represents a settlement of claims of the United States and the State of Wisconsin against Metallics, Inc., for reimbursement of response costs and injunctive relief in connection with the Onalaska Municipal Landfill site (''Site'') pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*

Under this settlement between the United States, the State of Wisconsin, and Metallics, Metallics will pay the United States $1,350,000 in partial reimbursement of response costs incurred by the Environmental Protection Agency at the Site. Metallics will pay $675,000 to the United States and $675,000 to the State, plus accrued interest, in annual installment payments over a three year period, commencing 60 days following entry of the proposed consent decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Metallics, Inc.*, D.J. Ref. 90–11–3–605B.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Wisconsin, 660 West Washington Avenue, Suite 200, Madison, Wisconsin 53701, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker Smith,

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 96–28615 Filed 11–6–96; 8:45 am]

BILLING CODE 4410–01–M

### Notice of Consent Decree in Comprehensive Environmental Response, Compensation and Liability Action

In accordance with the Departmental Policy, 28 C.F.R. 50.7, notice is hereby given that two Consent Decrees in *United States* v. *Ralph Riehl, et al.*, Civil Action No. 89–226(E), were lodged with the United States District Court for the Western District of Pennsylvania on October 21, 1996.

On October 16, 1989, the United States filed a complaint against the owners and operator of, and certain transporters to, the Millcreek Dump Superfund Site (the ''Site''), pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9607(a). In September 1991, the United States added additional defendants to the action. The two proposed Consent Decrees resolve the liability of Bethlehem Steel Corporation and United Brass Works, Keystone Foundry Division. These Consent Decrees resolve the liability of the above-named defendants for the response costs incurred and to be incurred by the United States at the Site. Bethlehem Steel Company will pay $100,000 in response costs and United Brass Works will pay $197,500 in response costs.

The Department of Justice will accept written comments relating to these proposed Consent Decrees for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *Ralph Riehl, et al.*, DOJ No. 90–11–3–519.

Copies of the proposed Consent Decrees may be examined at the Office of the United States Attorney, Western District of Pennsylvania, Federal Building and Courthouse, Room 137, 6th and States Streets, Erie, Pennsylvania 15219; Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202) 624–0892. A copy of each proposed Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. When requesting copies of the proposed Consent Decrees, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the ''Consent Decree Library'' in the following amounts:

$6.00 for the Bethlehem Steel Consent Decree
$5.75 for the United Brass Works, Keystone Foundry Division Consent Decree

Joel M. Gross,

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.*

[FR Doc. 96–28616 Filed 11–6–96; 8:45 am]

BILLING CODE 4410–01–M

## Antitrust Division

### Proposed Final Judgment and Competitive Impact Statement; United States of America v. American Radio Systems Corporation, The Lincoln Group, L.P. and Great Lakes Wireless Talking Machine LLC

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have

been filed with the United States District Court for the District of Columbia in *United States* v. *American Radio Systems Corporation, The Lincoln Group, L.P. and Great Lakes Wireless Talking Machine LLC,* Civ. Action No. 96–2459. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act. 15 U.S.C. 16(b)–(h).

The United States filed a civil antitrust Complaint on October 24, 1996, alleging that the proposed acquisition of assets of The Lincoln Group, L.P. (''Lincoln'') by American Radio Systems Corporation (''ARS'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and that the Joint Sales Agreement (''JSA'') between ARS and Great Lakes Wireless Talking Machine LLC (''Great Lakes'') violates Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint alleges that ARS and Lincoln own and operate three and four radio stations respectively in the Rochester, New York area. In addition, ARS has a JSA with a radio station owned by Great Lakes (WNVE–FM), allowing ARS post-merger to control the sale of advertising time on an eighth station as well. This acquisition would allow ARS to control advertising time on six of the top eight radio stations in the Rochester area. As a result, the combination of these companies would substantially lessen competition in the sale of radio advertising time in Rochester, New York and the surrounding area.

Moreover, the Complaint alleges that, beginning at least as early as October 1, 1995 and continuing to this day, ARS and Great Lakes entered into a contract, the purpose of which is the elimination of all pricing competition between two rival radio stations, to the detriment of purchasers of radio advertising time in the Rochester area. As such, it constitutes an illegal contract in restraint of interstate trade and commerce.

The proposed Final Judgment orders ARS to divest WHAM–AM and WVOR–FM, both currently owned by Lincoln, and WCMF–AM, currently owned by ARS. Unless the United States grants a time extension, ARS must divest these radio stations either within six months after the filing of the Final Judgment, or within five (5) business days after notice of entry of the Final Judgment, whichever is later. If ARS does not divest WHAM–AM, WVOR–FM and WCMF–AM within the divestiture period, the Court may appoint a trustee to sell the assets. The proposed Final Judgment also requires ARS to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, all of Lincoln's present stations (including WHAM–AM and WVOR–FM) will be operated independently as viable, ongoing businesses, and kept separate and apart from ARS' other Rochester radio stations. Further, the proposed Final Judgment requires ARS to give the United States prior notice as to certain future radio station acquisitions in Rochester.

In addition, the Final Judgment requires ARS and Great Lakes to terminate the JSA that allows ARS to sell radio advertising time for WNVE within five (5) business days after receiving notice of entry of the Final Judgment, and to cease and desist from entering into any future joint sales agreements between them in the Rochester, New York Metro Survey Area. ARS and Great Lakes also must terminate their ''Option Agreement'' dated September 28, 1995, between them, within five (5) business days after receiving notice of the entry of the Final Judgment, unless ARS has first assigned this agreement to any entity or entities acquiring WHAM–AM, WVOR–FM or WCMF–AM. Furthermore, the proposed Final Judgment requires ARS and Great Lakes to give the United States prior notice before entering any future agreements that would grant ARS or Great Lakes the right to sell advertising time or to establish advertising prices for non-ARS radio stations in Rochester.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the Federal Register and filed with the Court. Written comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, 1401 H Street, NW, Suite 4000, Washington, D.C. 20530 (telephone: 202–307–0001). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th St., NW, Washington, D.C. 20530 (telephone: 202–514–2481), and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, NW, Washington, D.C. 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States of America (hereinafter ''United States'') has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the parties and by filing that notice with the Court.

(3) The defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

(4) The parties recognize that there could be a delay in obtaining approval by or a ruling of a government agency related to the divestitures required by Section IV of the Final Judgment, notwithstanding the good faith efforts of American Radio Systems Corporation (''ARS'') and any prospective Acquirer. In this circumstance, the United States will, in the exercise of its sole discretion, acting in good faith, give special consideration to forebearing from applying for the appointment of a trustee pursuant to Section V of the Final Judgment, or from pursuing legal remedies available to it as a result of such delay, provided that: (i) ARS has entered into one or more definitive agreements to divest the Lincoln Assets and WCMF–AM Assets, and such agreements and the Acquirer or Acquirers have been approved by the United States; (ii) All papers necessary to secure any governmental approvals and/or rulings to effectuate such divestitures (including but not limited to FCC, SEC and IRS approvals or rulings) have been filed with the appropriate agency; (iii) Receipt of such approvals are the only closing conditions that have not been satisfied or waived; and (iv) ARS has demonstrated that neither it nor the prospective Acquirer or Acquirers are responsible for any such delay.

(5) In the event the United States withdraws its consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(6) The defendants represent that the divestitures and contract terminations ordered in the proposed Final Judgment can and will be made, and that the defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or termination provisions contained therein.

Dated: October 24, 1996.

For Plaintiff United States of America:

Craig W. Conrath,

*U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20005, (202) 307–5779.*

For Defendant American Radio Systems Corporation:

James R. Loftis, III, Collier Shannon Rill & Scott, PLLC, 3050 K Street, N.W., Suite 400, Washington, DC 20007, (202) 342–8480.

For Plaintiff State of New York:

Dennis C. Vacco,

*Attorney General of the State of New York.*

John H. Carley,

*Deputy Attorney General, Public Advocacy.*

Stephen D. Houck,

*Assistant Attorney General, Chief, Antitrust Bureau.*

By:

Stephen D. Houck.

Richard L. Schwartz,

*Deputy Chief, Antitrust Bureau.*

George R. Mesires,

*Assistant Attorney General, 120 Broadway, Suite 2601, New York, New York 10271, (202) 416–8275.*

For Defendant the Lincoln Group, L.P.:

Jason L. Shrinsky,

*Kaye Scholer Fierman Hays & Handler, LLP, 901 15th Street, N.W., Suite 1100, Washington, DC 20005.*

For Defendant, Great Lakes Wireless Talking Machine LLC:

Stephen P. Morris,

*Morris & Morris, 30 Corporate Woods, Suite 120, Rochester, NY 14623, (716) 292–5750.*

## Certificate of Service

I, Dando B. Cellini, hereby certify that on October 24, 1996, I caused a copy of the foregoing Complaint, Motion for Entry of Stipulation and Order, Stipulation, form of Order, United States' Explanation of Consent Decree Procedures and Competitive Impact Statement filed this day in *United States and State of New York* v. *American Radio Systems, et. al* to be served on all parties by having a copy mailed, first class, postage prepaid, to:

Plaintiff State of New York:

George R. Mesires,

*Assistant Attorney General, State of New York, 120 Broadway, Suite 2601, New York, New York 10271.*

Defendant the Lincoln Group, L.P.:

Jason L. Shrinsky,

*Kaye Scholer Fierman Hays & Handler, LLP, 901 15th Street, NW., Suite 1100, Washington, DC 20005.*

Defendant American Radio Systems Corporation:

James R. Loftis, III,

*Collier Shannon Rill & Scott, PLLC, 3050 K Street, N.W., Suite 400, Washington, DC 20007, (202) 342–8480.*

Defendant Great Lakes Wireless Talking Machine LLC:

Stephen P. Morris,

*Morris & Morris, 30 Corporate Woods, Suite 120, Rochester, NY 14623, (716) 292–5750.*

Dando B. Cellini

Dated: October 24, 1996.

## Final Judgment

Case Number: 1:96CV02459
Judge: Norma Holloway Johnson
Deck Type: Antitrust
Date Stamp: 10/24/96
No. _____.

Whereas, plaintiffs, the United States of America (hereinafter ''United States'') and the State of New York (hereinafter ''New York''), having filed their Complaint herein on October 24, 1996, and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the purpose of this Final Judgment is prompt and certain divestiture of certain assets to assure that competition is not substantially lessened;

And whereas, plaintiffs require defendants to make certain divestitures and contract terminations for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to plaintiffs that the divestitures and contract terminations ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or termination provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or

adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

*I. Jurisdiction*

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants ARS and Lincoln, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and against defendants ARS and Great Lakes, as hereinafter defined, under Section 1 of the Sherman Act, as amended (15 U.S.C. 1).

*II. Definitions*

As used in this Final Judgment:

A. ''ARS'' means defendant American Radio Systems Corporation, a Delaware corporation with its headquarters in Boston, MA, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents, and employees acting for or on behalf of ARS.

B. ''Lincoln'' means defendant The Lincoln Group, L.P., a New York limited partnership with its headquarters in Syracuse, NY, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents, and employees acting for or on behalf of Lincoln.

C. ''Great Lakes'' means defendant Great Lakes Wireless Talking Machine LLC, a New York limited liability company with its headquarters in East Rochester, New York, and includes its successors and assigns, its subsidiaries, and directors, officers, managers, agents and employees acting for or on behalf of Great Lakes.

D. ''Lincoln Assets'' means all of the assets, tangible or intangible, used in the operation of the WHAM–AM and WVOR–FM radio stations in Rochester, New York, including but not limited to: All real property (owned and leased) used in the operation of these two stations; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies and other tangible property used in the operation of these two stations; all licenses, permits and authorizations and applications therefor issued by the Federal Communications Commission (''FCC'') and other governmental agencies relating to these two stations; all contracts, agreements, leases, and commitments of Lincoln pertaining to these two stations and their operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to these two stations; and all logs and other records maintained by Lincoln or these two stations in connection with each station's business.

E. ''WCMF–AM Assets'' means all of the following assets: all real property (owned and leased) used solely in the operation of radio station WCMF–AM; all broadcast equipment used solely in the operation of radio station WCMF–AM; and all licenses, permits, and authorizations and applications therefor issued by the Federal Communications Commission (''FCC'') and other governmental agencies relating to radio station WCMF–AM.

F. ''ARS Rochester Radio Stations'' means the following radio stations: WCMF–FM, WRMM–FM, WPXY–FM, and WHTK–AM.

G. ''Non-ARS Radio Station'' means any radio station licensed to a community in the Rochester Area that is not an ARS Rochester Radio Station.

H. ''Rochester Area'' means the Rochester, New York Metro Survey Area as identified by The Arbitron Radio Market Report for Rochester (Summer 1996), and includes the following six counties: Monroe, Wayne, Ontario, Livingston, Genesee and Orleans.

I. The ''WNVE Joint Sales Agreement'' means the agreement between ARS and Great Lakes dated September 28, 1995, entitled ''Joint Sales Agreement.

J. The ''WNVE Option Agreement'' means the agreement between ARS and Great Lakes dated September 28, 1995, entitled ''Option Agreement.''

K. ''WNVE'' means WNVE–FM, a radio station owned by Great Lakes and located in South Bristol, New York.

L. The ''Asset Purchase Agreement'' means the agreement between ARS and Lincoln dated February 23, 1996, entitled ''Asset Purchase Agreement.''

M. ''Acquirer'' means the entity or entities to whom ARS divests the Lincoln Assets and/or the WCMF–AM Assets under this Final Judgment.

*III. Applicability*

A. The provisions of this Final Judgment apply to each of the defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Each defendant shall require, as a condition of the sale or other disposition of all or substantially all of the assets used in its business of owning and operating its portfolio of radio stations in the Rochester Area, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment; provided, however, defendants need not obtain such an agreement from an Acquirer, as defined herein, or from any future purchaser of WNVE.

*IV. Divestiture of Lincoln Assets and WCMF–AM*

A. ARS is hereby ordered and directed, in accordance with the terms of this Final Judgment, within six (6) months after the filing of this Final Judgment, or within five (5) business days after notice of entry of this final judgment, whichever is later, to divest the Lincoln Assets and WCMF–AM Assets to an Acquirer acceptable to the United States, in its sole discretion, after consulting with New York. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV of this Final Judgment or by the trustee appointed pursuant to Section V, shall be accomplished in such a way as to satisfy the United States, in its sole discretion after consulting with New York, that the Lincoln Assets and WCMF–AM Assets can and will be used by an Acquirer as viable, ongoing commercial radio businesses. The divestitures, whether pursuant to Section IV or V of this Final Judgment, shall be made (i) to an Acquirer that, in the sole judgment of the United States after consulting with New York, has the capability and intent of competing effectively, and has the managerial, operational and financial capability to compete effectively as a radio station operator in the Rochester Area; and (ii) pursuant to an agreement the terms of which shall not, in the sole judgment of the United States after consulting with New York interfere with the ability of the purchaser to compete effectively.

B. ARS agrees to use its best efforts to divest the Lincoln Assets and WCMF–AM Assets, and to obtain all regulatory approvals necessary for such divestitures, as expeditiously as possible. The United States, in its sole discretion, may extend the time period for the divestitures for two (2) additional thirty (30)-day periods of time, not to exceed sixty (60) calendar days in total.

C. In accomplishing the divestitures ordered by this Final Judgment, ARS promptly shall make known, by usual and customary means, the availability of the Lincoln Assets and, unless relieved of this obligation by compliance with paragraph E of this Section, the WCMF–AM Assets. ARS shall inform any person making a bona fide inquiry regarding a possible purchase that the

sale is being made pursuant to this Final Judgment and provide such person with a copy of the Final Judgment. ARS shall make known to any person making an inquiry regarding a possible purchase of the Lincoln Assets or WCMF–AM Assets that the assets described in Section II (D) and (E) are being offered for sale. ARS and Lincoln shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Lincoln Assets and, unless relieved of this obligation by compliance with paragraph E of this Section, WCMF–AM Assets customarily provided in a due diligence process, except such information that is subject to attorney-client privilege or attorney work-product privilege. ARS shall make available such information to plaintiffs at the same time that such information is made available to any other person.

D. ARS and Lincoln shall permit bona fide prospective purchasers of the Lincoln Assets and, unless relieved of this obligation by compliance with paragraph E of this Section, WCMF–AM Assets, to have access to personnel and to make such inspection of the assets, and any and all financial, operational or other documents and information customarily provided as part of a due diligence process.

E. ARS may fully comply with those portions of Section IV and V that pertain to the divestiture of the WCMF–AM Assets by entering, within forty (40) days of the filing of this Final Judgment, into a binding agreement to divest the WCMF–AM Assets to an Acquirer approved by the United States, in its sole judgment after consulting with New York.

*V. Appointment of Trustee*

A. In the event that ARS has not divested the Lincoln Assets and WCMF–AM Assets within the time periods specified in Section IV above, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the assets.

B. After the trustee's appointment has become effective, only the trustee shall have the right to sell the Lincoln Assets and WCMF–AM Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section V and VIII of this Final Judgment and consistent with FCC regulations, and shall have other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of ARS any investment bankers, attorneys or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals or agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, in its sole judgment after consulting with New York, and shall have such other powers as this Court shall deem appropriate. ARS shall not object to the sale of the Lincoln Assets and WCMF–AM Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by ARS must be conveyed in writing to plaintiffs and the trustee no later than fifteen (15) calendar days after the trustee has provided the notice required under Section VIII of this Final Judgment.

C. The trustee shall serve at the cost and expense of ARS, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining monies shall be paid to ARS and the trustee's services shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divestiture and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. ARS shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Lincoln Assets and WCMF–AM Assets, and shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best efforts to effect all necessary regulatory approvals. Subject to a customary confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records, and facilities related to the Lincoln Assets and WCMF–AM Assets, and ARS shall develop such financial or other information as may be necessary to the divestiture of the Lincoln Assets and WCMF–AM Assets. ARS shall permit prospective purchasers of the Lincoln Assets and WCMF–AM Assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment becomes effective, the trustee shall file monthly reports with ARS, the plaintiffs and the Court, setting forth the trustee's efforts to accomplish divestiture of the Lincoln Assets and WCMF–AM Assets as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Lincoln Assets and WCMF–AM Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

F. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to ARS, the United States and New York, who shall each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it shall deem appropriate to accomplish the purpose of this Final Judgment, which shall, if necessary, include extending the term of the trustee's appointment.

*VI. Termination of Joint Sales Agreement and Option to Purchase*

ARS and Great Lakes are hereby ordered and directed, within five (5) business days after notice of entry of this Final Judgment, to terminate the WNVE Joint Sales Agreement, and to cease and desist from entering into any joint sales agreements between them in the Rochester Area. ARS and Great Lakes are further ordered and directed, within five (5) business days after notice

of entry of this Final Judgment, to terminate the WNVE Option Agreement, unless said Option Agreement has theretofore been assigned by ARS to an Acquirer approved in advance by the United States, in its sole judgment after consulting with New York.

*VII. Preservation of Assets/Hold Separate*

Until the divestiture of the Lincoln Assets required by Section IV of the Final Judgment has been accomplished.

A. ARS and Lincoln shall continue to take all steps necessary to ensure that WHAM–AM, WPXY–FM, WVOR–FM and WHTK–AM, until divested pursuant to Section IV, are maintained as separate, independent, ongoing, economically viable and active competitors to ARS and that, except as necessary to comply with Section IV and paragraphs B and C of this Section of the Final Judgment, the management of said stations, including the performance of decision-making functions regarding marketing and pricing, will be kept separate and apart from, and not influenced by, ARS.

B. ARS and Lincoln shall use all reasonable efforts to maintain and increase sales of advertising time by WHAM–AM, WPXY–FM, WVOR–FM and WKTK–AM, until divested pursuant to Section IV, and shall maintain at 1995 or previously approved levels for 1996, whichever are higher, promotional advertising, sales, marketing and merchandising support for such radio stations.

C. ARS and Lincoln shall take all steps necessary to ensure that the assets used by Lincoln in the operation of WHAM–AM, WPXY–FM, WVOR–FM and WHTK–AM are fully maintained until divested pursuant to Section IV. Lincoln's sales and marketing employees shall not be transferred or reassigned to any non-Lincoln ARS station, except for transfer bids initiated by employees pursuant to ARS' regular, established job posting policy, provided that ARS gives plaintiffs and Acquirer ten (10) days' notice of such transfer.

D. Neither ARS not Lincoln shall, except as part of a divestiture approved by the United States after consulting with New York or in connection with the consummation of the Asset Purchase Agreement, sell any Lincoln Assets.

E. ARS and Lincoln shall take no action that would jeopardize the sale of the Lincoln Assets.

F. ARS and Lincoln shall appoint a person or persons to oversee the assets to be held separate and who will be responsible for ARS' and Lincoln's compliance with Section VII of this Final Judgment.

*VIII. Notification*

Within two (2) business days following execution of a binding agreement to divest, including all contemplated ancillary agreements (e.g., financing), to effect, in whole or in part, any proposed divestiture pursuant to Section IV or V of this Final Judgment, ARS or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible, it shall similarly notify ARS. The notice shall set forth the details of the proposed transaction and list the name, address and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the Lincoln Assets or the WCMF–AM Assets, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiffs of such notice, plaintiffs may request from ARS, the proposed purchaser or purchasers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. ARS and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information, whichever is later, the United States after consulting with New York shall provide written notice to ARS and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States fails to object within the period specified, or if the United States provides written notice to ARS and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to ARS' limited right to object to the sale under Section V (B) of this Final Judgment. A divestiture proposed under Section IV shall not be consummated if the United States objects to the identity of the proposed purchaser or purchasers. Upon objection by the United States, or by ARS under the proviso in Section V (B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

*IX. Financing*

ARS is ordered and directed not to finance all or any part of any purchase by an Acquirer made pursuant to Sections IV or V of this Final Judgment without the prior written consent of the United States.

*X. Affidavits*

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or Section V of this Final Judgment, ARS shall deliver to plaintiffs an affidavit as to the fact and manner of ARS' compliance with Section IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address and telephone number of each person who, at any time after the period covered by the last such report, was contacted by ARS, or their representatives, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or made an inquiry about acquiring, any interest in the Lincoln Assets or the WCMF–AM Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that ARS has taken to solicit a buyer for the Lincoln Assets and the WCMF–AM Assets.

B. Within twenty (20) calendar days following the entry of this Final Judgment, ARS and Great Lakes shall deliver to plaintiffs an affidavit as to the fact and manner of their compliance with Section VI of this Final Judgment.

C. Within twenty (20) calendar days of the filing of this Final Judgment, ARS shall deliver to plaintiffs an affidavit which describes in reasonable detail all actions ARS has taken and all steps ARS has implemented on an on-going basis to preserve WHAM–AM, WPXY–FM, WVOR–FM and WHTK–AM pursuant to Section VII of this Final Judgment. ARS shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in its earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after such change is implemented.

D. ARS shall preserve all records of all efforts made to preserve WHAM–AM, WPXY–FM, WVOR–FM and WHTK–AM and to divest the Lincoln Assets and the WCMF–AM Assets.

*XI. Notice*

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), ARS, without providing advance notification to the plaintiffs, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any

Non-ARS Radio Station; provided, however, that, where not inconsistent with the HSR Act, ARS need not provide notice under this provision for an acquisition of any one, but not more than one, of any Class A Licensed FM radio station in the Rochester Area other than WDKX, 103.9 FM, and WMAX, 106.7 FM, or their successors.

B. ARS and Great Lakes, without providing advance notification to the plaintiffs, shall not directly or indirectly enter into any agreement or understanding that would allow ARS or Great Lakes to market or sell advertising time or to establish advertising prices for any Non-ARS Radio Station.

C. Notification described in (A) and (B) above shall be provided to the plaintiffs in the same format as, and per the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that, in the case of ARS, the information requested in Items 5–9 of the instructions must be provided only with respect to ARS Rochester Radio Stations. Notification shall be provided at least thirty (30) days prior to acquiring any such interest or entering any such agreement covered in (A) or (B) above, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the plaintiffs make a written request for additional information, ARS or Great Lakes shall not consummate the proposed transaction or agreement until twenty (20) days after submitting all such additional information, Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder.

D. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

*XII. Compliance Inspection*

For the purpose of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiffs, including consultants and other persons retained by the plaintiffs, shall, upon written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, or of the New York Attorney General, and on reasonable notice to defendants made to their principal offices, permitted:

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview directors, officers, employees and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the United States Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, or of the New York Attorney General, made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section XII shall be divulged by any representative of the United States or New York to any person other than a duly authorized representative of the Executive Branch of the United States or the State of New York, except in the course of legal proceedings to which either plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by any defendant to plaintiffs, and such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days' notice shall be given by plaintiffs to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which such defendant is not a party.

*XIII. Retention of Jurisdiction*

Jurisdiction is retained by this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation or modification of any provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

*XIV. Termination*

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

*XV. Public Interest*

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

*I. Nature and Purpose of the Proceeding*

The plaintiffs filed a civil antitrust Complaint on October 24, 1996, alleging that the proposed acquisition of The Lincoln Group, L.P. (''Lincoln'') by American Radio Systems Corporation (''ARS'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and that the Joint Sales Agreement (''JSA'') between ARS and Great Lakes Wireless Talking Machine LLC (''Great Lakes'') violates Section 1 of the Sherman Act, 15 U.S.C. 1. The Compliant alleges that ARS and Lincoln own and operate three and four radio stations respectively in the Rochester, New York area. In addition, ARS has a JSA with a radio station owned by Great Lakes (WNVE–FM), allowing ARS post-merger to control the sale of advertising time on an eighth station as well. This acquisition would allow ARS to control advertising time on six of the top eight radio stations in the Rochester area. As a result, the combination of these companies would substantially lessen competition in the sale of radio advertising time in Rochester, New York and the surrounding area.

Moreover, the Complaint alleges that, beginning at least as early as October 1, 1995 and continuing to this day, ARS and Great Lakes entered into a contract, the purpose of which is the elimination of all pricing competition between two rival radio stations, to the detriment of purchasers of radio advertising time in the Rochester area. As such, it constitutes an illegal contract in restraint of interstate trade and commerce.

The prayer for relief seeks: (a) Adjudication that ARS's proposed acquisition of Lincoln would violate Section 7 of the Clayton Act; (b) adjudication that ARS' JSA with Great Lakes is a violation of Section 1 of the Sherman Act; (c) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition and enjoining the continuation of the JSA; (d) an award to the United States of the costs of this action; and (e) such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits ARS to complete its acquisition of Lincoln, yet preserves competition in the market for which the transaction would raise significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.

The proposed Final Judgment orders ARS to divest WHAM–AM and WVOR–FM, both currently owned by Lincoln, and WCMF–AM, currently owned by ARS. Unless the United States grants a time extension, ARS must divest these radio stations either within six months after the filing of the Final Judgment, or within five (5) business days after notice of entry of the Final Judgment, whichever is later. If ARS does not divest WCMF–AM and the Lincoln Assets within the divestiture period, the Court may appoint a trustee to sell the assets. The proposed Final Judgment also requires ARS to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, all of Lincoln's present stations (including WHAM–AM and WVOR–FM) will be operated independently as viable, ongoing businesses, and kept separate and apart from ARS' other Rochester radio stations. Further, the proposed Final Judgment requires ARS to give the United States prior notice as to certain future radio station acquisitions in Rochester.

In addition, the Final Judgment requires ARS and Great Lakes to terminate the JSA that allows ARS to sell radio advertising time for WNVE within five (5) business days after receiving notice of entry of the Final Judgment, and to cease and desist from entering into any future joint sales agreements between them in the Rochester, New York Metro Survey Area. ARS and Great Lakes also must terminate their ''Option Agreement'' dated September 28, 1995, between them, within five (5) business days after receiving notice of the entry of the Final Judgment, unless ARS has first assigned this agreement to any entity or entities acquiring either the Lincoln Assets or WCMF–AM. Furthermore, the proposed Final Judgment requires ARS and Great Lakes to give the United States prior notice before entering any future agreements that would grant ARS or Great Lakes the right to sell advertising time or to establish advertising prices for non-ARS radio stations in Rochester.

The plaintiffs and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

*II. The Alleged Violations*

A. The Defendants

Defendant ARS is a Delaware corporation with its headquarters in Boston, Massachusetts. It currently owns and operates 62 radio stations in 14 metropolitan areas in the United States. In 1995, ARS reported total net revenues of approximately $97 million. ARS owns three radio stations in Rochester, and sells advertising for one other radio station (WNVE) under a JSA.

Lincoln is a New York limited partnership headquartered in Syracuse, New York. Lincoln owns four radio stations in Rochester and two in Salem, Ohio. Great Lakes is a New York limited partnership headquartered in East Rochester, New York. It owns one radio station in Rochester, WNVE–FM

B. Description of the Events Giving Rise to the Alleged Violations

On February 23, 1996, ARS agreed to purchase Lincoln for approximately $30.5 million. As a result of the proposed transaction; ARS would own or have the right to sell advertising for six of the top eight radio stations in Rochester.

ARS and Great Lakes formerly competed for the business of local and national companies seeking to advertise in the Rochester area. This competition ended after ARS and Great Lakes entered into a JSA on September 28, 1995, giving ARS exclusive control over the sale of advertising on Great Lakes' radio station, WNVE–FM. The JSA eliminated rivalry between direct competitors, to the detriment of radio advertisers, without realizing any procompetitive benefits.

The proposed acquisition between ARS and Lincoln and the JSA between ARS and Great Lakes precipitated the Government's suit.

C. Anticompetitive Consequences of the Proposed Merger

1. *Sale of Radio Advertising Time in Rochester.* The Complaint alleges that the provision of advertising time on radio stations serving the Rochester, New York Metro Survey Area (''MSA'') constitutes a line of commerce and section of the country, or relevant market, for antitrust purposes. The Rochester MSA is the geographical unit for which Arbitron furnishes radio stations, advertisers, and advertising agencies in Rochester with data to aid in evaluating radio audience size and composition. The Rochester MSA includes six counties: Monroe; Wayne; Ontario; Livingston; Genesee and Orleans. Local and national advertising that is placed on radio stations within the Rochester MSA is aimed at reaching listening audiences in the Rochester MSA, and radio stations outside of the Rochester MSA do not provide effective access to this audience. Thus, advertisers would not buy enough advertising time from radio stations located outside of the Rochester MSA to defeat a small but significant nontransitory increase in radio advertising prices within the Rochester MSA.

Radio advertising time is sold by radio stations directly or through their national representatives. Radio stations generate almost all of their revenues from the sale of advertising time to local and national advertisers.

Many local and national advertisers purchase radio advertising time in Rochester because such advertising is preferable to advertising in other media for their specific needs. For such advertisers, radio time: may be less expensive and more cost-efficient than other media at reaching the advertiser's target audience (individuals most likely to purchase the advertiser's products or services); may reach certain target audiences that cannot be reached as effectively through other media; or may offer promotional opportunities to advertisers that they cannot exploit as effectively using other media. For these reasons, many local and national advertisers in Rochester who purchase radio advertising time view radio either as a necessary advertising medium for them, or as a necessary advertising complement to other media.

Although some local and national advertisers may switch some of their advertising to other media rather than absorb a price increase in radio advertising time in Rochester, the existence of such advertisers would not prevent radio stations from profitably raising their prices a small but

significant amount to those advertisers who have strong preferences for using radio over other media for some or all of their advertising campaigns. Radio stations, which negotiate prices individually with advertisers, can identify those advertisers with strong radio preferences. Consequently, radio stations can charge different advertisers different rates. Because of this ability to price discriminate between different customers, radio stations may charge higher prices to advertisers that view radio as particularly effective for their needs, while maintaining lower prices for other advertisers.

2. *Harm to Competition.* The Complaint alleges that ARS' proposed acquisition of Lincoln would lessen competition substantially in the provision of radio advertising time in the Rochester MSA. The proposed acquisition would create further market concentration in an already highly concentrated market, and ARS would control a substantial share of the advertising revenues in the market. ARS presently controls approximately 34% of all radio advertising revenues in Rochester (including its JSA with Great Lakes), and its market share would rise to approximately 64% after the proposed merger. According to the Herfindahl-Hirschman Index (''HHI''), a widely-used measure of market concentration defined and explained in Exhibit A hereto, the pre-merger HHI in this market is 2704, which would rise to 4744 after the merger, with a change of 2040. This substantial increase in concentration will reduce competition and lead to higher prices and reduced services.

Advertisers select radio stations to reach a large percentage of their target audience based upon a number of factors, including, *inter alia*, the size of the station's audience and the characteristics of its audience. Many advertisers seek to reach a large percentage of their target audience by selecting those stations whose audience best correlates to their target audience. If a number of stations efficiently reach that target audience, advertisers benefit from the competition among such stations to offer better prices or services. Today, several ARS and Lincoln stations compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in Rochester, they are close substitutes for each other based on their specific audience characteristics.

During price negotiations between advertisers and radio stations, advertisers will provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of ads. Radio stations thus have the ability to charge advertisers differing prices after assessing the number and attractiveness of alternative radio stations that can meet a particular advertiser's specific target audience needs.

After the merger, advertisers attempting to reach certain audiences who now mostly listen to ARS and Lincoln stations would face less desirable choices if they buy time solely from firms other than the merged entities in order to reach these audiences. Because advertisers seeking to reach these audiences would have inferior alternatives to the merged entity as a result of the merger, the acquisition would give ARS the ability to raise its rates and reduce the quality of its service.

The Department also considered how the proposed merger would concentrate Rochester's strongest radio signals into the hands of a single entity. After the merger, ARS would own four of the seven Class B FM license radio stations in the Rochester area, and would have controlled advertising on a fifth Class B FM license radio station through its JSA with Great Lakes. ARS would also own the area's only clear channel AM station. The merger would therefore have given ARS control over advertising on six of Rochester's eight most powerful radio signals.

If ARS raised prices or lowered services to those advertisers who buy ARS and Lincoln stations because of their strength in delivering access to certain specific audiences, non-ARS radio stations in Rochester would not be induced to change their formats to attract a greater share of the same listeners and to serve better those advertisers seeking to reach such listeners. Successful radio stations are unlikely to undertake a format change solely in response to small but significant increases in price being charged to advertisers by a multi-station firm such as ARS, because they would likely have to give up their existing audiences. Less successful stations that change format may still not attract enough listeners to provide a suitable alternative to the merged entity.

New entry into the Rochester radio advertising market is highly unlikely in response to a price increase by the merged parties. No unallocated radio broadcast frequencies exist in Rochester. Also, stations located in adjacent communities cannot boost their power so as to enter the Rochester market without interfering with other stations on the same or similar frequencies, a violation of Federal Communications Commission (''FCC'') regulations.

For these reasons, the Department concludes that the merger as proposed would substantially lessen competition in the sale of radio advertising time in the Rochester MSA, eliminate actual competition between ARS and Lincoln, and result in increased rates for radio advertising time in the Rochester MSA, all in violation of Section 7 of the Clayton Act.

D. The JSA is an Illegal Restraint of Trade

The complaint alleges that the JSA between ARS and Great Lakes violates Section 1 of the Sherman Act. Before entering into the JSA, Great Lakes station WNVE–FM competed with ARS Station WCMF–FM for advertisers. Advertisers regularly played one of these stations off against the other to obtain better rates and increased services. In the fall of 1995, ARS and Great Lakes entered into a JSA pursuant to which ARS exclusively prices and sells all radio advertising time on WNVE–FM. In return, ARS pays Great Lakes a monthly lump sun.

The JSA gives ARS complete control over the sale of the inventory of its direct competitor. In so doing, the JSA eliminates one of the most important forms of competition between two firms in an open market: independent pricing. The agreement thus gives rise to the inference that it will have anticompetitive effects.

This is the first JSA assessed by the Department. The FCC, though not purporting to address antitrust issues, have suggested that, at least in certain circumstances (without addressing the circumstances present here), some JSAs may be beneficial. Accordingly, the Department considered whether the JSA possessed any redeeming procompetitive virtues. However, the creators of this JSA have not offered any plausible procompetitive justifications for the JSA, and our examination revealed none.

Based on our investigation, we found that this JSA did not improve either the operations of the radio stations or the quality of their products. The JSA did not integrate the management or operations of the two stations. Nor did the JSA create any procompetitive benefits for advertisers. Indeed, the Department uncovered evidence that the JSA was created for the simple purpose of ending price competition between the two stations. As one key participant explicitly acknowledged, the JSA was entered into because the two stations ''were fighting needlessly over the advertising dollar.''

Given the JSA's inherently suspect nature and conspicuous lack of procompetitive virtues, the JSA is an unreasonable restraint that violates Section 1 of the Sherman Act. See *Federal Trade Comm'n* v. *Indian Federation of Dentists,* 476 U.S. 447, 459 (1986).[1] Moreover, though not necessary to the conclusion that this JSA is anticompetitve, our investigation uncovered evidence that, following the creation of the JSA, advertising prices increased despite a decline in listenership.

*III. Explanation of the Proposed Final Judgment*

The proposed Final Judgment would preserve competition in the sale of radio advertising time in the Rochester MSA. It requires the divestiture of WHAM–AM, WVOR–FM and WCMF–AM. It ends ARS' control of WNVE advertising time. This relief will reduce the market share ARS would have achieved through the merger from over 60 percent to about 40 percent of the Rochester radio market. The divestitures will preserve choices for advertisers and help ensure that radio advertising rates in Rochester do not increase, and that services do not decline.

Unless the United States grants an extension of time, ARS must divest WHAM–AM, WVOR–FM and WCMF–AM either within six months after the Final Judgment has been filed or within five (5) business days after notice of entry of the Final Judgment, whichever is later. Until the divestitures take place, all stations now owned by Lincoln will be maintained as independent competitors to the other stations in the Rochester MSA, including the ARS stations.

If ARS fails to divest WHAM–AM, WVOR–FM and WCMF–AM within the time periods specified in the Final Judgment, the Court, upon application of the United States, shall appoint a trustee nominated by the United States to effect these divestitures. If a trustee is appointed, the proposed Final Judgment provides that ARS will pay all costs and expenses of the trustee and any professionals agent retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of WHAM–AM, WVOR–FM and WCMF–AM, and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished. After appointment, the trustee will file monthly reports with ARS, the plaintiffs and the Court, setting forth the trustee's efforts to accomplish the divestiture ordered under the proposed Final Judgment. If the trustee has not accomplished the divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. At the same time, the trustee will furnish such report to ARS and the plaintiffs, who will each have the right to be heard and to make additional recommendations.

The proposed Final Judgment requires that ARS maintain all stations now owned by Lincoln separate and apart from ARS, pending divestiture. The Judgment also contains provisions to ensure that these Lincoln stations will be preserved, so that the stations after divestiture will remain viable, aggressive competitors.

In addition, the proposed Final Judgment requires ARS and Great Lakes to terminate the WNVE Joint Sales Agreement within five (5) business days after notice of entry of the Final Judgment, and to cease and desist from entering into any future joint sales agreements between them in the Rochester area. This prohibition prevents the parties from re-entering what the Department has already determined would be an illegal contract, and is designed to prevent a recurrence of a violation of Section 1 of the Sherman Act, not merely as a way to guard against another possible violation of Section 7 of the Clayton Act.

Moreover, ARS and Great Lakes must terminate the WNVE Option Agreement (which gives ARS the right to purchase WNVE) within five (5) business days after notice of entry of the Final Judgment, unless the option has been assigned to one of the entities that is buying either WHAM–FM, WVOR–FM or WCMF–AM. This prohibition prevents further increases in concentration by ARS without providing the government with adequate notice.

The proposed Final Judgment also prohibits ARS from entering into certain agreements with other Rochester radio stations without providing at least thirty (30) days' notice to the Department of Justice. Specifically, ARS must notify the Department before acquiring any significant interest in another Rochester radio station, except for acquisition of one additional Class A-License FM radio station in the Rochester MSA other than WDKX–FM or WMAX–FM. Acquisitions beyond this would raise competitive concerns but might be too small to be otherwise reportable under the Hart-Scott-Rodino (''HSR'') premerger notification process.

Moreover, ARS and Great Lakes may not agree to sell radio advertising time for any other Rochester radio station, or have any other Rochester radio station sell advertising time for them, without providing the United States with notice. This provision ensures that the Department will receive advance notice of any acquisition, or agreements, through which ARS or Great Lakes would increase the amount of advertising time on radio stations that they can sell. In particular, this provision requires ARS and Great Lakes to notify the Department before they enter into any joint sales agreements (''JSAs''), where one station takes over another station's advertising time, or enter into any local marketing agreements (''LMAs''), where one station takes over another station's broadcasting and advertising time, in the Rochester area. Agreements whereby ARS sells advertising for or manages other area radio station would effectively increase ARS' market share in the Rochester MSA. In analyzing the Rochester radio market, the Department treated ARS' present JSA station as if ARS owned it outright. Despite their clear competitive significance, JSAs probably would not be reportable to the Department under HSR. Thus, this provision in the decree ensures that the Department will receive notice of and be able to act, if appropriate, to stop any agreements that might have anticompetitive effects in the Rochester market.

The relief in the proposed Final Judgment is intended to remedy the competitive effects of the proposed acquisition of Lincoln by ARS, and to eliminate a contract between ARS and Great Lakes that constitutes an illegal restraint of trade. Nothing in this Final Judgment is intended to limit the plaintiffs' ability to investigate or to bring actions, where appropriate, challenging other past or future activities of ARS or Great Lakes in the Rochester MSA, including their entry into other JSAs, LMAs, or other agreements related to the sale of advertising time.

*IV. Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may

[1] The Department recognizes that JSAs may differ both in their terms and in their potential for realizing procompetitive efficiencies.

bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

*V. Procedures Available for Modification of the Proposed Final Judgment*

The plaintiffs and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, N.W.; Suite 4000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

*VI. Alternatives to the Proposed Final Judgment*

The plaintiffs considered, as an alternative to the proposed Final Judgment, a full trial on the merits of their Complaint against defendants. The plaintiffs are satisfied, however, that the divestiture of the Lincoln Assets, the termination of the JSA between ARS and Great Lakes, and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time in the Rochester MSA. Thus, the proposed Final Judgment would achieve the relief the Government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

*VII. Standard of Review Under the APPA for Proposed Final Judgment*

The APPA requires that proposed consent judgment in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the United States Court of Appeals for the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [2] Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *citing United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d at 1460–62. Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether its it certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it fall short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' [4]

[2] 119 Cong. Rec. 24598 (1973). See *United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), reprinted in U.S.C.C.A.N. 6535, 6538.

[3] *Bechtel*, 648 F.2d 666 (citations omitted) (emphasis added); see *BNS*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. *See also Microsoft*, 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '') (citations omitted).

[4] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting Gillette Co.* 406 F. Supp. at 716 (citations omitted); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

This is strong and effective relief that should fully address the competitive harm posed by the proposed merger and the JSA.

*VIII. Determinative Documents*

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Respectfully submitted,

Dando B. Cellini,

*Merger Task Force, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W.; Suite 4000, Washington, D.C. 20530, (202) 307–0001.*

Dated: October 24, 1996.

*Exhibit A—Definition of HHI and Calculations for Market*

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See Merger Guidelines § 1.51.

[FR Doc. 96–28617 Filed 11–6–96; 8:45 am]

BILLING CODE 4410–01–M

## Federal Bureau of Investigation

### Criminal Justice Information Services (CJIS) Advisory Policy Board

The Criminal Justice Information Services (CJIS) Advisory Policy Board will meet on December 12–13, 1996, from 9 a.m. until 5 p.m., at the San Diego Concourse Center, 202 C Street, San Diego, California, telephone 619–236–6500, to formulate recommendations to the Director, Federal Bureau of Investigation (FBI) on the security, policy, and operation of the National Crime Information Center (NCIC), NCIC 2000, the Integrated Automated Fingerprint Identification System (IAFIS), and the Uniform Crime Reporting and National Incident Based Reporting System programs.

The topics to be discussed will include the progress of the NCIC 2000 and IAFIS projects, and other topics related to the operation of the FBI's criminal justice information systems.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a written statement concerning the FBI CJIS Division programs or related matters with the Board. Anyone wishing to address this session of the meeting should notify the Designated Federal Employee, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, facsimile, or a hand-delivered note. It should contain the requestor's name, corporate designation, consumer affiliation, or Government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. A nonmember requestor will ordinarily be allowed not more than 15 minutes to present a topic, unless specifically approved by the Chairman of the Board.

Inquires may be addressed to the Designated Federal Employee, Mr. Demery R. Bishop, Section Chief, Programs Development Section, CJIS Division, FBI, 935 Pennsylvania Avenue, Northwest, Washington, DC 20537–9700, telephone 202–324–5084, facsimile 202–324–8906.

Dated: October 31, 1996

Demery R. Bishop,

*Section Chief, Programs Development Section, Federal Bureau of Investigation, Designated Federal Employee.*

[FR Doc. 96–28675 Filed 11–6–96; 8:45 am]

BILLING CODE 4410–02–M

## Office of Justice Programs

**[OJP No. 1104]**

**ZRIN 1121–ZA–53**

### Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention; Correction

**AGENCY:** Office of Justice Programs, Justice.

**ACTION:** Correction to notice of meeting.

**SUMMARY:** The time for the meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention has changed. The meeting will begin at 10:00 a.m. on Wednesday, November 20, 1996 and will end at 12:00 p.m. on November 20, 1996. All other information remains unchanged. The original meeting notice can be found at 61 FR 56570, November 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** The point of contact at OJJDP is Lutricia Key who can be reached at (202) 307–5911.

Dated: October 31, 1996.

Shay Bilchik,

*Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 96–28569 Filed 11–6–96; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF LABOR

### Office of the Chief Financial Officer; Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of the Chief Financial Officer is soliciting comments concerning the proposed extension of Department of Labor regulations implementing various provisions of the Debt Collection Act of 1982, including Disclosure of Information to Credit Reporting Agencies; Administrative Offset; Interest, Penalties and Administrative Costs.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before January 6, 1997.

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**ADDRESSES:** Mark Wolkow, Department of Labor, Room S–4502 Frances Perkins Building, 200 Constitution Ave. NW, Washington, D.C. 20210; 202–219–8184 x123 (phone); 202–219–4975 (fax); mwolkow@dol.gov (email).

**SUPPLEMENTARY INFORMATION:**

I. Background

The Debt Collection Act of 1982 and the Federal Claims Collection Standards, as implemented in the Department by 29 CFR Part 20, require Federal agencies to afford debtors the opportunity to exercise certain rights before the agency reports a debt to a credit bureau or makes an administrative offset. In the exercise of these rights, the debtor may be asked to provide a written explanation of the basis for disputing the amount or existence of a debt alleged owed the agency. A debtor may also be required to provide asset, income, liability, or other information necessary for the agency to determine the debtor's ability to repay the debt, including any interest, penalties and administrative costs assessed.

Information provided by the debtor will be evaluated by the agency official responsible for collection of the debt in order to reconsider his/her initial decision with regard to the existence or amount of the debt. Information concerning the debtor's assets, income, liabilities, etc., will be used by the agency official responsible for collection of the debt to determine whether the agency's action with regard to administrative offset or the assessment of interest, administrative costs or penalties would create undue financial hardship for the debtor, or to determine whether the agency should accept the debtor's proposed repayment schedule.

If a debtor disputes or asks for reconsideration of the agency's determination concerning the debt, the debtor will be required to provide the information or documentation necessary to state his/her case. Presumably, the agency's initial determination would not change without the submission of new information.

Information concerning the debtor's assets, income, liabilities, etc., would typically not be available to the agency unless submitted by the debtor.

II. Current Actions

Failure of the agency to request the information described would either violate the debtor's rights under the Debt Collection Act of 1982 or limit the agency's ability to collect outstanding debts.

If a debtor wishes to appeal an agency action based on undue financial hardship, he/she may be asked to submit information on his/her assets, income, liabilities, or other information considered necessary by the agency official for evaluating the appeal. Use of the information will be explained to the debtor when it is requested; consent to use the information for the specified purpose will be implied from the debtor's submission of the information.

*Type of Review:* Extension without change.

*Agency:* Office of the Chief Financial Officer.

*Title:* Disclosure of Information to Credit Reporting Agencies; Administrative Offset; Interest penalties and Administrative Costs.

*OMB Number:* 1225–0030.

*Agency Number:* N/A.

*Affected Public:* Individuals or households; businesses or other for-profit; not-for-profit institutions; small business or organizations; farms; Federal employees.

*Cite/Reference/Form/etc:* It is estimated that 10% of the individuals and organizations indebted to the Department will contest the proposed collection action and will request an administrative review and/or appeal an action based on undue financial hardship. In some cases the debtor will make one request, but not the other. However, in most cases, it is expected that the debtor will request both actions—first, administrative review of the determination of indebtedness, and second, relief because of undue financial hardship.

Annual burden was estimated based on a review of debtor responses to similar requests for information. Debtors typically respond in 1–2 page letters, supplemented by copies of documents. Letters are most often typewritten. Annual burden is based on a 1¾ hour time allotment to prepare and type a letter. Debtors will not be asked to respond on a form.

*Estimated Total Burden Hours:* 12,250

*Estimated Total Burden Cost*

Estimated annual cost to the Federal Government: $734,650.

Estimated annual cost to the respondents: $239,890.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 31, 1996.

Michael N. Griffin,

*Acting Deputy Chief Financial Officer.*

[FR Doc. 96–28654 Filed 11–6–96; 8:45 am]

**BILLING CODE 4510–23–M**

## Office of the Secretary

### President's Committee on Employment of People With Disabilities: Notice of Availability of Funds and a Solicitation for Grant Applications

**AGENCY:** President's Committee on Employment of People with Disabilities, Labor.

**ACTION:** Notice of availability of funds and a solicitation for grant applications for a five-year grant (FY 1997–2002) for the performance of the Job Accommodation Network (JAN), a service of the President's Committee on Employment of People with Disabilities.

**SUMMARY:** This notice sets forth the application procedures for a grant for JAN, a free consulting, information and referral service on job accommodation in its twelfth year of operation. The Job Accommodation Network receives inquiries from the public by telephone, mail, electronic mail, FAX and other means. In response, JAN supplies individualized information to employers, people with disabilities, service providers and other publics. Currently, JAN processes an average of 3,600 toll-free telephone calls per month. JAN is also a key national repository of data on job accommodation.

The Job Accommodation Network is a service of the President's Committee on Employment of People with Disabilities. The President's Committee is a federal agency which has been in existence since 1947 and was more recently reauthorized by Executive Order 12640, dated May 10, 1988, to maximize employment opportunities for people with disabilities.

In accordance with Executive Order 12640 and by arrangement between the Chairman of the President's Committee

and the U.S. Department of Labor, the U.S. Department of Labor provides administrative and logistical support.

This solicitation for grant application (SGA) is open to any organization or institution (except those on the federal debarment list) that has a proven record of providing programs and services that contribute to the employability of people with disabilities and that is capable of performing the program requirements listed in the SGA.

Five objectives are listed in the SGA. They are: (1) Personalized Service, (2) Electronic Services, (3) Enhancing the National Leadership of JAN within the Disability Information and Referral System, (4) Marketing job Accommodation Network Services, and (5) Support the Activities of the President's Committee on Employment of People with Disabilities.

**DATE:** The closing date for receipt of a completed application package in response to this notice is January 24, 1997. Applications received after that time will be considered for award only if they are postmarked by the United States Postal Service five days or more before the closing date, or if it is determined that the application was sent by U.S. Postal Service Express Mail Next Day Service no later than 5:00 p.m., January 22d.

**FOR FURTHER INFORMATION CONTACT:** Lisa Harvey, Office of Procurement Services, U.S. Department of Labor, 200 Constitution Ave., NW., Room N–5416, Washington, DC 20210. Ms. Harvey will mail the SGA's to requesters. In addition, the entire SGA is available on the website of the President's Committee: http://www.pcepd.gov/current/jamnsga.htm.

Signed at Washington, D.C., this 1st day of November 1996.

John Lancaster,

*Executive Director, President's Committee on Employment of People with Disabilities.*

[FR Doc. 96–28655 Filed 11–6–96; 8:45 am]

**BILLING CODE 4510–23–M**

## Employment and Training Administration

## Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation as part of its role in the administration of the Federal-State unemployment compensation program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies (SESAs). The UIPL described below is published in the Federal Register in order to inform the public.

UIPL 30–96

This UIPL is being issued to clarify the distinction between ''work-relief'' and ''work-training'' for purposes of coverage under the unemployment compensation (UC) program. This UIPL broadens the interpretation previously issued in 1986 in UIPL 15–86 and will not require any change to State UC laws. (It should be noted that the footnote in that UIPL incorrectly characterizes two court cases as UC cases. A program letter correcting this will be issued at a later date.)

UIPL 37–96

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104–193, was enacted on August 22, 1996. This legislation, popularly known as the welfare reform bill, made several changes which affect the UC program. Specifically, the PRWORA: establishes New Hire Directories at both the State and National levels; requires that certain UC information be provided to State/National New Hire Directories; requires that States collect quarterly wage reports from State and local governmental entities and ''labor organizations;'' authorizes State and local child support enforcement agencies to disclose UC data to an agent; requires State and local child support agencies to obtain access to UC information for establishing paternity and other purposes; affects the eligibility of aliens; and, addresses the intercept of food stamp overissuances.

This UIPL provides information on these amendments and advises States of those instances where amendments to State UC law are needed to meet Federal UC law requirements. This UIPL does not, however, address those amendments relating to the eligibility of aliens. After completing its analysis of the amendments relating to aliens, the Department will issue guidance to the States as appropriate.

Dated: November 4, 1996.

Timothy M. Barnicle,

*Assistant Secretary of Labor.*

*U.S. Department of Labor*

Employment and Training Administration, Washington, D.C. 20210

CLASSIFICATION: UI
CORRESPONDENCE SYMBOL:TEUL
DATE: August 8, 1996

DIRECTIVE: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 30–96
TO: ALL STATE EMPLOYMENT SECURITY AGENCIES
FROM: MARY ANN WYRSCH, Director, Unemployment Insurance Service
SUBJECT: Work-Relief and Work-Training Exclusion

1. *Purpose*. To provide an interpretation of Section 3309(b)(5) of the Federal Unemployment Tax Act (FUTA) which permits an exception to coverage requirements of Section 3304(a)(6)(A), FUTA, for services performed as part of an unemployment work-relief or work-training program.

2. *References*. The Internal Revenue Code, including the Federal Unemployment Tax Act (FUTA), and Unemployment Insurance Program Letter (UIPL) 15–86, dated February 13, 1986.

3. *Background*. UIPL 15–86 provided the Department's interpretation of ''work-relief'' and ''work-training'' for purposes of assisting States in determining what services may be excluded from coverage for unemployment compensation (UC). Since that UIPL did not clearly distinguish between services performed in work-relief and services performed in work-training, confusion has resulted as to what services may actually be excluded. This UIPL provides the Department's position on the difference between ''work-relief'' and ''work-training.'' As this UIPL results in broadening the interpretation taken in UIPL 15–86, it will not result in States needing to amend their laws.

4. *Federal Law Requirements.* The Department has long taken the position that, because FUTA is a remedial statute aimed at overcoming the evils of unemployment, it is to be liberally construed to effectuate its purposes and exemptions to its requirements are to be narrowly construed. This interpretation avoids ''difficulties for which the remedy was devised and adroit schemes by some employers and employees to avoid the immediate burdens at the expense of the benefits sought by the legislation.'' [1]

Section 3304(a)(6)(A), FUTA, requires that each State pay UC based on services performed for certain governmental entities and nonprofit organizations. Specifically, Section 3304(a)(6)(A) requires coverage of services to which Section 3309(a)(1) applies. Section 3309(a)(1) applies to services excluded from the term ''employment'' solely by reason of either Section 3306(c) (7) or (8), FUTA. Section 3306(c)(7) pertains to services performed for a ''State, or any political subdivision thereof. * * *'' Section 3306(c)(8) pertains to services performed for ''religious, charitable, educational, or other organization described in section 501(c)(3)'' of the Internal Revenue Code. Exclusions

[1] These interpretations were stated on page 5 of Supplement #5—Questions and Answers Supplementing *Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976—P.L. 94–566,* dated November 13, 1978. Several Federal court decisions, including two cases involving UC, *United States* v. *Silk,* 331 U.S. 704, 712 (1947) and *Farming, Inc.* v. *Manning,* 219 F.2d 779, 782 (3d Cir., 1955), are illustrative of this position.

from this required coverage are found in the remaining paragraphs of Section 3306(c) and Section 3309(b). Section 3309(b)(5) excludes services performed—

(5) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of a State or political subdivision thereof, by an individual receiving such work relief or work training.

The Department's position is that while ''work-relief'' and ''work-training'' are both excluded, they are two distinct exclusions. Work-relief projects are primarily intended to alleviate the disadvantaged status of the individual by providing employment. For ''work-training,'' there is no requirement that the individual must be economically disadvantaged. Instead, work-training focuses on improving the individual's employability. (This does not, however, preclude the possibility that some work-training programs be limited to the economically disadvantaged.)

As noted above, UIPL 15–86 did not clearly distinguish between work-relief and work-training. The following listing is intended to clarify their distinguishing characteristics. No attempt is made to list names of programs that fall under the definitions given in this UIPL since the characteristics of the program will determine whether or not they must be covered.

A. Both of the following characteristics must be present in either work-relief or work-training:

(1) the employer-employee relationship is based more on the participants' and communities' needs than normal economic considerations such as increased demand or the filling of a bona fide job vacancy;

(2) the products or services are secondary to providing financial assistance, training, or work-experience to individuals to relieve them of their unemployment or poverty or to reduce their dependence upon various measures of relief, even though the work may be meaningful or serve a useful public purpose.

B. A work-relief or work-training program must have one or more of the following characteristics:

(1) the wages, hours, and conditions of work are not commensurate with those prevailing in the locality for similar work;

(2) the jobs did not, or rarely did, exist before the program began (other than under similar programs) and there is little likelihood they will be continued when the program is discontinued;

(3) the services furnished, if any, are in the public interest and are not otherwise provided by the employer or its contractors; and

(4) the jobs do not displace regularly employed workers or impair existing contracts for services.

C. The following characteristic must be present only for work-relief programs:

The qualifications for the jobs take into account as indispensable factors the economic status, i.e., the standing conferred by income and assets, of the applicants.

6. *Action Required.* State agency administrators are requested to provide this UIPL to appropriate staff.

7. *Inquiries.* Direct questions to your Regional Office.

RESCISSIONS: UIPL 15–86
EXPIRATION DATE: Continuing

*U.S. Department of Labor*

Employment and Training Administration, Washington, D.C. 20210

CLASSIFICATION: UI
CORRESPONDENCE SYMBOL: TEUL
DATE: 09/25/96
DIRECTIVE: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 37–96
TO: ALL STATE EMPLOYMENT SECURITY AGENCIES
FROM: MARY ANN WYRSCH, Director, Unemployment Insurance Service
SUBJECT: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996

1. *Purpose.* To advise the States of amendments made to Federal law by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 which affect the Federal-State Unemployment Compensation (UC) program.

2. *References.* The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193); the Internal Revenue Code of 1986 (IRC), including the Federal Unemployment Tax Act (FUTA); the Social Security Act (SSA); Unemployment Insurance Program Letters (UIPLs) No. 37–86 and 23–96; and Office of Management and Budget (OMB) Circular No. A–87 (60 *Fed. Reg.* 26484, May 17, 1995).

3. *Background.* The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104–193, was enacted on August 22, 1996. This legislation, popularly known as the ''welfare reform'' bill, made several changes which affect the UC program. These changes—

- Establish New Hire Directories at both the State and National levels,
- Require that certain UC information be provided to State/National New Hire Directories,
- Require that States collect quarterly wage reports from State and local governmental entities and ''labor organizations,''
- Authorize State and local child support enforcement agencies to disclose UC data to an agent,
- Require State and local child support agencies to obtain access to UC information for establishing paternity and other purposes,
- Affect the eligibility of aliens, and
- Address the intercept of food stamp overissuances.

This UIPL provides information on these amendments and advises States of those instances where amendments to State UC law are needed to meet Federal UC law requirements. This UIPL does not, however, address those amendments relating to the eligibility of aliens. After completing its analysis of the amendments relating to aliens, the Department will issue guidance to the States as appropriate.

4. *State Directory of New Hires (''State Directory'')—Section 453A, SSA, as added by Section 313(b), PRWORA.* The PRWORA replaced the Aid to Families with Dependent Children program with the Transitional Assistance to Needy Families (TANF) program. A State's TANF grant is conditioned on meeting certain requirements, including a requirement that the State operate a child support enforcement program. As part of the child support enforcement program, the State must operate a Directory of New Hires by October 1, 1997. This Directory must contain the name, address, and social security number of each newly hired individual and the name, address, and Federal employer identification number of the hiring employer. (Section 453(b)(1), SSA, as amended.) If a State chooses to use its UC agency as the collection point for the State Directory, the UC agency will need to meet any conditions for such Directory established by the PRWORA as interpreted by the Secretary of Health and Human Services (HHS).

If the UC agency maintains the State Directory and uses the State Directory for UC purposes, UC grant funds may be used to pay UC costs associated with the Directory consistent with OMB Circular No. A–87. However, UC grants may not be used to pay for any costs of providing State Directory information to the TANF agency or to the National New Hires Directory discussed below.

New Section 453A(g)(2)(B), SSA, specifically references Federal UC law—

Wage and Unemployment Compensation Information.—The State Directory of New Hires shall, on a quarterly basis, furnish to the National Directory of New Hires extracts of the reports required under section 303(a)(6) to be made to the Secretary of Labor concerning the wages and unemployment compensation paid to individuals, by such dates, in such format, and containing such information as the Secretary of Health and Human Services shall specify in regulations.

In other words, as a condition of receiving its TANF grant, the State Directory must obtain certain information from the UC agency and furnish that information to the Secretary of HHS. This requirement for the transfer of data is effective October 1, 1997. (Section 453A(a)(1)(B), SSA, as amended.) Section 303(a)(6), SSA, requires States to make ''such reports as the Secretary of Labor may from time to time require.'' [1] Under Section 453(i), SSA, as amended by the PRWORA, the above information is required to be transmitted from the State Directory to the National Directory of New Hires.

5. *National Directory of New Hires (''National Directory'')—Section 453(i), SSA, as amended by Section 316, PRWORA.* Section 453, SSA, requires the Secretary of HHS to establish and conduct a Federal Parent Locator Service (FPLS). The mission of the FPLS is to obtain and transmit to any authorized person (as defined under Section 453(c)) information as to the whereabouts of any absent parent. This information is to be used to locate the parent for the purpose of enforcing child support obligations.

[1] The Secretary does not currently require the submittal of data on individuals under Section 303(a)(6), SSA. However, as discussed below, both the FUTA and SSA have been amended to require UC agencies to provide wage and claim information to the State Directory.

As a result of the PRWORA, the FPLS is now charged with establishing and maintaining a National Directory of New Hires no later than October 1, 1997. The National Directory will consist of new hire information as well as information supplied ''pursuant to section 453A(g)(2),'' SSA, as quoted in part above. The Conference Report for the PRWORA explains that—

When fully implemented the Federal Directory of New Hires will contain identifying information on virtually every person who is hired in the United States. In addition, the FPLS [Directory of New Hires] will contain quarterly data supplied by the State Directory of New Hires on wages and Unemployment Compensation paid. * * * The information is to be used for purposes of locating individuals to establish paternity, and to establish, modify, or enforce child support orders. [H. Rep. 104–725, as quoted in the *Congressional Record* for July 30, 1996, page H8918.]

As this National Directory contains information which may be in the files of the State UC agency, two amendments concerning the provision of this information were made to Federal UC law. First, Section 314(g)(2), PRWORA, amended Section 3304(a)(16), FUTA, to provide, as a condition of a State law being certified for tax credit that—

(A) wage information contained in the records of the agency administering the State law which is necessary (as determined by the Secretary of Health and Human Services in regulations) for purposes of determining an individual's eligibility for assistance, or the amount of such assistance, under a State program funded [2] under part A of title IV of the Social Security Act, shall be made available to a State or political subdivision thereof when such information is specifically requested by such State or political subdivision for such purposes,

(B) wage and unemployment compensation information contained in the records of such agency shall be furnished to the Secretary of Health and Human Services (in accordance with regulations promulgated by such Secretary) as necessary for the purposes of the National Directory of New Hires established under section 453(i) of the Social Security Act, and

(C) such safeguards are established as are necessary (as determined by the Secretary of Health and Human Services in regulations) to insure that information furnished under subparagraph (A) or (B) is used only for the purposes authorized under such subparagraph; [New language bolded.]

Second, Section 316(g)(2), PRWORA, amended Section 303(h), SSA,[3] to provide, as a condition of States receiving administrative grants for their UC programs, that—

(1) The State agency charged with the administration of the State [UC] law shall, on a reimbursable basis—

(A) disclose quarterly, to the Secretary of Health and Human Services, wage and claim information, as required pursuant to section 453(i)(1) [establishing the National Directory], contained in the records of such agency;

(B) ensure that information provided pursuant to subparagraph (A) meets such standards relating to correctness and verification as the Secretary of Health and Human Services, with the concurrence of the Secretary of Labor, may find necessary; and

(C) establish such safeguards as the Secretary of Labor determines are necessary to insure that information disclosed under subparagraph (A) is used only for purposes of section 453(i)(1) in carrying out the child support enforcement program under title IV.

(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirement of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, the Secretary shall make no future certification to the Secretary of the Treasury with respect to the State.

(3) For purposes of this subsection—

(A) the term ''wage information'' means information regarding wages paid to an individual, the social security account number of such individual, and the name, address, State, and the Federal employer identification number of the employer paying such wages to such individual; and

(B) the term ''claim information'' means information regarding whether an individual is receiving, has received, or has made application for, unemployment compensation, the amount of such compensation being received (or to be received by such individual), and the individual's current (or most recent) home address.

Although the amendment to the FUTA, is less specific, both amendments have the same effect: The State UC agency must provide certain information to the National Directory. Specifically ''wage information'' and ''claim information'' as defined in Section 303(h)(3), SSA, must be supplied on a quarterly basis. The UC agency is required to supply only wage and claim information which is already contained in its records. It is not required to obtain additional information for purposes of the National Directory.

The SSA amendment requires that the State must provide such safeguards as the Secretary of Labor determines are necessary to determine that the information is used only for the purposes of the National Directory of New Hires. However, the FUTA amendment provides that the Secretary of HHS will establish such safeguards. The Department of Labor will be studying this matter, in conjunction with the Department of HHS, to determine what, if any, safeguards individual States must establish prior to providing the FPLS with UC information.

Costs of Providing Information. Under amended Section 303(h), SSA, UC information will be provided to the National Directory ''on a reimbursable basis.'' Section 453(e)(2) provides that the costs of providing information to the Secretary of HHS ''shall be reimbursed'' to ''any State.'' Section 453(g), SSA, describes what amounts ''may'' reimbursed to the States:

Reimbursement for Reports by State Agencies.—The Secretary may reimburse Federal and State agencies for the costs incurred by such entities in furnishing information requested by the Secretary under this section in an amount which the Secretary determines to be reasonable payment for the information exchange (which amount shall not include payment for the costs of obtaining, compiling, or maintaining the information). [Emphasis added.]

In brief, the States are not required to disclose UC information under Section 303(h) unless they are reimbursed by the Secretary of HHS. However, the Secretary of HHS has sole authority to determine the amount to be reimbursed. If the Secretary of HHS does not reimburse the State for what the State determines to be the entire cost of providing UC information, Federal funds provided for the administration of the State's UC program may not be used to make up the difference. Under section 303(a)(8), SSA, UC grants may be used only for the proper and efficient administration of the State's UC law, which does not include the costs of disclosing this information.

Effective date for UC conformity provisions. Under new Section 453(a)(1), SSA, each State is required to establish a State Directory effective October 1, 1997. (States which already have State Directories are given until October 1, 1998, to meet the requirements of Section 453A, except that the State must transmit information to the National Directory effective October 1, 1997.) Under Section 453(i), SSA, the FPLS is required to establish and maintain a National Directory by October 1, 1997.

However, Section 395(a)(2), PRWORA provides that ''all other provisions of this title [pertaining to the Directories] shall become effective upon the date of enactment.'' Section 395(b) further provides that:

Grace Periods For State Law Changes.—The provisions of this title shall become effective with respect to a State on the later of—

(1) the date specified in this title, or

(2) the effective date of laws enacted by the legislature of such State implementing such provisions, but in no event later than the 1st day of the 1st calendar quarter beginning after the close of the 1st regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

Thus, notwithstanding the requirement that the State and National Directories be

[2] The bolded language commencing with ''eligibility'' was inserted by Section 110(k)(2), PRWORA, as a conforming amendment. It recognizes the repeal of the AFDC program and the creation of the TANF program.

[3] Prior to amendment, Section 303(h), SSA, required State UC agencies to ''take such actions * * * as may be necessary to enable the Secretary of Health and Human Services to obtain prompt access to any wage and unemployment compensation claims information'' for purposes of carrying out the child support enforcement program. See UIPL 11–89.

operative on October 1, 1997, States which need to amend their UC laws may qualify for a grace period which extends beyond this date to the first day of the first calendar quarter following the close of the first regular session of the State legislature. Since each year of a legislative session is deemed a separate session and since all annual sessions will adjourn by December 31, 1997, this means all States qualifying for a grace period must be in a position to provide wage and claim information to the National Directory by January 1, 1998.[4]

States will need to review their UC laws and regulations to determine if disclosure to the National Directory is permissible. If it is not, States must take all actions necessary to ensure that the information will be disclosed.

6. *State UC Agency Access to State Directory—Section 453A(h)(3), SSA, as added by Section 313(b), PRWORA. Provision of Information in National Directory to State UC Agency—Section 453(k), SSA, as added by Section 316(f), PRWORA.* New Section 453A(h)(3), SSA, requires, as a condition of a State receiving a TANF grant, that access to the State Directory be provided to State employment security (that is, UC and employment service) agencies:

Administration of Employment Security and Workers' Compensation.—State agencies operating employment security and workers' compensation programs shall have access to information reported by employers pursuant to subsection (b) [that is, New Hire data] for the purposes of administering such programs.

New Section 453A(h)(2), SSA, contains an identical provision requiring the granting of access to a State agency responsible for administering a program specified in Section 1137(b), SSA, pertaining to the Income Eligibility Verification System. Paragraph (3) of Section 1137(b), specifies the UC program. Therefore, additional authority exists for requiring the granting of access to UC agencies.

The PRWORA does not address how the costs of a UC agency accessing a State Directory will be determined. The allowability of these costs for UC grant purposes is governed by OMB Circular No. A–87.

States should be aware that, under new Section 453(n), SSA, (as added by Section 316(f), PRWORA), Federal departments, agencies and instrumentalities are required to submit certain information to the National Directory:

Federal Government Reporting.—Each department, agency, and instrumentality of the United States shall on a quarterly basis report to the Federal Parent Locator Service the name and social security number of each employee and the wages paid to the employee during the previous quarter, except that such a report shall not be filed with respect to an employee of a department, agency, or instrumentality performing intelligence or counterintelligence functions, if the head of such department, agency, or instrumentality has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

In addition, new Section 453A(b)(1)(C), SSA, requires Federal entities to report new hire information:

Federal Government Employers.—Any department, agency, or instrumentality of the United States shall comply with subparagraph (A) [requiring employers to furnish new hire information] by transmitting the report described in subparagraph (A) to the National Directory of New Hires * * *

As this information may be useful for UC purposes, the Department will be discussing its potential uses with the Department of HHS. States should be aware that the Secretary of HHS has the sole authority for determining the extent, if any, to which any information in the National Directory may be shared with State UC agencies.[5] In the event that States may obtain such information, Section 453(K)(3), SSA, addresses costs for providing information from the National Directory—

FOR INFORMATION FURNISHED TO STATE AND FEDERAL AGENCIES.—A State or Federal agency that receives information from the Secretary [of HHS] pursuant to this section shall reimburse the Secretary for costs incurred by the Secretary in furnishing the information, at rates which the Secretary determines to be reasonable (which rates shall include payment for the costs of obtaining, verifying, maintaining, and comparing the information). [Emphasis added.]

Thus, the Secretary of HHS has the sole authority for determining what fees will be paid by State UC agencies for any information obtained from the National Directory.

7. *Income Eligibility Verification System—Amendment to Section 1137(a)(3), SSA, made by Section 313(c)(1), PRWORA.* Section 303(f), SSA, requires a State to operate an income eligibility verification system (IEVS) which meets the requirements of Section 1137(a), SSA. Section 1137(a)(3) requires employers ''to make quarterly wage reports to a State agency'' which may be the State UC agency. The PRWORA amended the SSA to expand the types of employers required to submit quarterly wage reports while at the same time allowing an exception. As a result Section 1137(a)(3) now reads, in part, as follows—

employers (including State and local governmental entities and labor organizations (as defined in section 453A(a)(2)(B)(iii)) [sic—should probably be (ii)] in such State are required * * * to make quarterly wage reports to a State agency (which may be the agency administering the State's unemployment compensation law) except that the Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) may waive the provision of this paragraph if he determines that the State has in effect an alternative system which is as effective and timely for purposes of providing employment related income and eligibility data for the purposes described in paragraph (2), and except that no report shall be filed with respect to an employee of a State or local agency performing intelligence or counterintelligence functions, if the head of such agency has determined that filing such a report could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission; [Amendments bolded.]

New Section 453A(a)(2)(B)(ii), SSA, as added by Section 313(b), PRWORA, provides that ''labor organization''—

shall have the meaning given such term in section 2(5) of the National Labor Relations Act, and includes any entity (also known as a ''hiring hall'') which is used by the organization and an employer to carry out requirements described in section 8(f)(3) of such Act of an agreement between the organization and the employer.''

Section 2(5) of the National Labor Relations Act (NLRA) defines ''labor organization'' as—

any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Section 8(f)(3) of the NLRA pertains to agreements covering employees in the building and construction industry under which the employer notifies the labor organization ''of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment.''

As a result of the amendments to Section 1137(a)(3), SSA, all States must require State and local governments and the labor organizations described above to submit quarterly wage reports to a State agency which may be the UC agency. States will need to examine their laws and regulations to determine if any amendments are necessary. Also as a result of the amendments to Section 1137(a)(3), SSA, States are prohibited from requiring the filing of a report concerning an employee who is performing ''intelligence or counter intelligence functions'' if the head of a State or local agency employing the individual determines that the filing of such a report ''could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.''

UC agencies should be aware that Section 409(a)(4), SSA, as amended by Section 103(a), PRWORA, provides that, if the Secretary of HHS determines that a State TANF program is not participating during a fiscal year in the IEVS as required, the

[4] Section 395(c), PRWORA, provides for a longer grace period if the State needs to amend its Constitution. This longer grace period will end at the earlier of (1) one year after the effective date of the necessary State constitutional amendment or (2) 5 years after the date of enactment of the PRWORA.

[5] Section 453(1), SSA, as added by Section 316(f), PRWORA, limits the use of information ''in the Federal Parent Locator Service,'' which includes information in the National Directory. The information in the Federal Parent Locator Service ''shall not be used or disclosed, except as expressly provided'' in Section 453, SSA. Section 453(j)(3)(B), SSA, also added by Section 316(f), PRWORA, authorizes the Secretary of HHS to disclose information in the directories to ''State agencies.'' Under Section 453(j)(3), these agencies are limited to TANF and child support agencies.

Secretary of HHS will reduce the State's TANF grant for the following fiscal year by up to 2 percent.

The effective date of the amendment to Section 1137(a)(3), SSA, is the date of enactment of the PRWORA. (Section 395(a)(2), PRWORA.) However, if the State must amend its law to require such reporting, the effective date is the effective date of the law enacted by the State legislature, but in no case later than January 1, 1998. (Section 395(b)(2), PRWORA. See item 5 of this UIPL for an explanation of this January 1, 1998 effective date.)

8. *Use of UC Information for Child Support Enforcement Purposes—Section 303(e), SSA, as amended by Section 313(d), PRWORA.* Section 303(e), SSA, among other things, requires States to provide certain UC information to child support enforcement agencies. The PRWORA added the following new paragraph to the end of Section 303(e)—

(5) A State or local child support enforcement agency may disclose to any agent of the agency that is under contract with the agency to carry out the purposes described in paragraph (1)(B) [i.e., for purposes of establishing and collecting child support obligations from, and locating, individuals owing such obligation] wage information that is disclosed to an officer or employee of the agency under paragraph (1)(A) [i.e., a state or local child support enforcement agency]. Any agent of a State or local child support agency that receives wage information under this paragraph shall comply with the safeguards established pursuant to paragraph (1)(B). [Emphasis added.]

Section 303(a)(1), SSA, requires that State law contain ''[s]uch methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.'' This provision has long been interpreted to prohibit, with certain exceptions, disclosure of claimant and employer UC information. Although disclosure to public officials in the performance of their duty has been permitted, disclosure to private entities without the consent of the individual is generally not allowed. (See UIPL 23–96.)

The amendment partially removes this restriction on disclosure to private entities for purposes of Section 303(e), SSA. Federal law now authorizes a State UC agency to provide UC information to a State or local child support agency which turns that information over to a private contractor for purposes of establishing and collecting child support obligations from, and locating, individuals owing such obligations. This authorization is contingent on the existence of safeguards consistent with Section 303(e)(1)(B), SSA, as determined in regulations issued by the Secretary of Labor. The Secretary of Labor has not yet prescribed regulations on these safeguards. Therefore, until these regulations are issued, States will assure compliance with Section 303(e)(1)(B) by following the confidentiality protection provisions of 20 CFR 603.7 pertaining to requesting agencies.

A State wishing to use this new authority will need to determine whether its UC law must be amended. The amendment to Section 303(e), SSA, is effective on the date of enactment of the PRWORA.

9. *Use of Employment Security Information to Establish Paternity and for Other Purposes—Section 466(c)(1), SSA, as added by Section 325(a)(2), PRWORA.* Section 466(c)(1), SSA, requires that State and local child support enforcement agencies use certain expedited procedures relating ''to the establishment of paternity or to establishment, modification, or enforcement of support orders. * * *'' One of these procedures is obtaining access to employment security records—

(D) Access to Information Contained in Certain Records.—To obtain access, subject to safeguards on privacy and information security, and subject to the nonliability of entities that afford such access under this subparagraph, to information contained in the following records (including automated access, in the case of records maintained in automated data bases):

* * * * *

(V) employment security records. * * *

Federal UC law was not amended to require State UC agencies to provide such access. Specifically, Section 303(e), SSA, relating to the provision of UC information to child support agencies was not amended. However, Section 303(e)(1)(A), SSA, already requires that wage information be disclosed, upon request and on a reimbursable basis, to child support agencies. Also, Section 303(a)(1), SSA, permits disclosure of UC information, including claim information, to public officials in the performance of their duties.

States will need to review their UC laws and regulations to determine if granting access to child support agencies—subject to safeguards, nonliability and payment of any costs associated with granting such access—requires amendment to State UC law to accommodate the child support agency.

10. *Food Stamp Overissuances—Section 13(b)(1) of the Food Stamp Act of 1977 (FSA) as amended by Section 844(a), PRWORA.* Under Section 303(d)(2), SSA, ''uncollected overissuances'' of food stamp allotments may be intercepted from an individual's UC under certain limited conditions. See UIPL 37–86 for a complete explanation of these conditions.

Although the PRWORA did not amend Section 303(d)(2), SSA, it did amend Section 13(b)(1) of the FSA to require that a State Food Stamp agency must now collect any overissuance of food stamp coupons issued ''to a household'' by withholding amounts from UC payable to ''a member of the household''[6] as provided under Section 13(c), FSA, which establishes certain procedures for the food stamp agency. Under subsection (2) of Section 13(b), FSA, the Secretary of Agriculture may waive this requirement under certain conditions.

Section 13(b)(1), FSA, does not affect the requirements of Section 303(d)(2), SSA. It merely mandates that State food stamp agencies take an action that previously was optional under the FSA and that is permitted under the SSA.

As all State laws contain provisions which prohibit attachment of UC, States which have not already enacted provisions implementing Section 303(d)(2), SSA, will need to amend their UC laws to accommodate the State food stamp agency. The following draft language will, as adjusted for State usage, assure UC conformity requirements are met:

(1)(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he or she owes an uncollected overissuance (as defined in section 13(c)(1) of the Food Stamp Act of 1977) of food stamp coupons. The commissioner shall notify the State food stamp agency enforcing such obligation of any individual who discloses that he or she owes child support obligations and who is determined to be eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance—

(A) the amount specified by the individual to the commissioner to be deducted and withheld under this clause,

(B) the amount (if any) determined pursuant to an agreement submitted to the State food stamp agency under section 13(c)(3)(A) of the Food Stamp Act of 1977; or

(C) any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to section 13(c)(3)(B) of such Act.

(c) Any amount deducted and withheld under this section shall be paid by the commissioner of the appropriate State food stamp agency.

(d) Any amount deducted and withheld under subsection (b) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the State food stamp agency as repayment of the individual's uncollected overissuance.

(e) For purposes of this section, the term ''unemployment compensation'' means any compensation payable under this Act including amounts payable by the commissioner pursuant to an agreement under any Federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This section applies only if arrangements have been made for reimbursement by the State food stamp agency for the administrative costs incurred by the commissioner under this section which are attributable to the repayment of uncollected overissuances to the State food stamp agency.

As State food stamp agencies must reimburse the State UC agency for the administrative costs incurred in intercepting food stamps (Section 303(d)(2)(D), SSA), State UC agencies may not perform any food stamp intercept activities without entering into an agreement for reimbursement of all costs which will be incurred by such activities. (UIPL 37–86, page 4.)

[6] Under Section 13(a)(2), FSA, ''[e]ach adult member of a household shall be jointly and severally liable for the value of any overissuance of coupons.'' Since food stamps are allotted to households, this means every adult member of the household may be liable for the overissuance.

If the State food stamp agency does not wish the State UC agency to perform all the activities listed in Section 303(d)(2), SSA, the State UC agency need only perform those activities for which it is paid. For example, if the State food stamp agency does not wish the UC agency to require applicants for UC is to disclose whether an overissuance is owed, then the State UC agency need not do so.

11. *Action.* Each State must take appropriate action to assure that its law authorizes the disclosure of UC wage and claim information to the National Directory of New Hires. State UC agencies which maintain State wage record files will need to assure that State and local governmental entities and labor organizations submit quarterly wage reports as required. UC agencies are encouraged to cooperate with other State agencies in implementing the requirements of the PRWORA.

12. *Inquiries.* Please direct inquiries to the appropriate Regional Office.

RESCISSIONS: None
EXPIRATION DATE: Continuing

[FR Doc. 96–28656 Filed 11–6–96; 8:45 am]
BILLING CODE 4510–30–M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–489 AND 50–499]**

### Houston Lighting and Power Company, City Public Service Board of San Antonio Central Power and Light Company; City of Austin, Texas of Transfer of Licenses and Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80 of the transfer of Facility Operating License Nos. NPF–76 and NPF–80, issued to Houston Lighting & Power Company, et al., (HL&P, the licensee) with respect to operating authority thereunder for the South Texas Project, located in Matagorda County, Texas, and considering issuance of conforming amendments under 10 CFR 50.90.

The proposed transfer of operating authority under the licenses would authorize a new operating company to use and operate South Texas Project Units 1 and 2 (STP) and to possess and use related licensed nuclear materials in accordance with the same conditions and authorizations included in the current operating licenses. The operating company would be formed by the owners to become the licensed operator for STP and would have exclusive control over the operation and maintenance of the facility. The licenses would be amended to reflect the transfer of authority under the licenses.

Under the proposed arrangement, ownership of STP will remain unchanged with each owner retaining its current ownership interest. The new operating company will not own any portion of STP. Likewise, the owners' entitlement to capacity and energy from STP will not be affected by the proposed change in operating responsibility for STP from HL&P to the new operating company. The owners will continue to provide all funds for the operation, maintenance, and decommissioning by the operating company of STP. The responsibility of the owners will include funding for any emergency situations that might arise at STP.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of a license, or any right thereunder, after notice to interested persons. Such approval is contingent upon the Commission's determination that the proposed transferee is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments will not increase the probability or consequences of any accident previously evaluated.

The employees of HL&P presently engaged in the operation of STP will become employees of OPCO [the operating company]. Personnel qualifications, therefore, will remain the same as those discussed in the Technical Specifications and the UFSAR [Updated Final Safety Analysis Report]. The organizational structure of OPCO will continue to provide for clear management control and effective lines of authority and communication among the organizational units involved in the management, operation, and technical support of the facility. Accordingly, the technical qualifications of OPCO will be at least equivalent to those of HL&P presently.

As a result of the proposed amendments, there will not be physical changes to the facility, and all Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications will remain unchanged. With the exception of administrative changes to reflect the role of OPCO, the Quality Assurance Program, the Emergency Plan, Security Plan, and Training Program are unaffected. The Operating Agreement will ensure continued compliance with GDC [General Design Criterion] 17 as well as OPCO control over all activities within the exclusion area.

Therefore, the proposed changes will not increase the probability or consequences of any accident previously evaluated.

2. The proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The design and design bases of STP will remain the same. Therefore, the current plant safety analyses which address the licensing basis events and analyze plant response and consequences, will not be affected. The Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits are not affected by the proposed amendments. With the exception of administrative changes to reflect the role of OPCO, plant procedures are unaffected. As such, the plant conditions for which the design basis accident analyses have been performed will not be changed. Therefore, the proposed amendments cannot create the possibility of a new or different kind of accident than previously evaluated.

3. The proposed amendments will not involve a reduction in a margin of safety.

Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications. There will be no change to the physical design or operation of the plant or to any of these margins. The proposed amendments, therefore, will not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the

expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facilities, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 9, 1996, the licensee may file a request for a hearing with respect to the proposed transfer of operating authority under the licenses and issuance of conforming amendments to the subject facility operating licenses, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the transfer approval or amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested with respect to the proposed amendments, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any such amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William D. Beckner, Director, Project Directorate IV–1: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, D.C. 20036–5869, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions,

supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application dated August 23, 1996, as supplemented by letters dated October 1 and 15, 1996, regarding the transfer of licenses and amendments, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Dated at Rockville, Maryland, this 1st day of November 1996.

For the Nuclear Regulatory Commission.

William D. Beckner,

*Project Director, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 96–28642 Filed 11–06–96; 8:45 am]

**BILLING CODE 7590–01–P**

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**[Docket No. 72–18–ISFSI; ASLBP No. 97–720–01–ISFSI]**

## In the Matter of Northern States Power Company (Independent Spent Fuel Storage Installation); Notice of Prehearing Conference

November 1, 1996.

This proceeding concerns the application of Northern States Power Co. (NSP) for a license under 10 CFR Part 72 to possess spent fuel and other radioactive materials associated with spent fuel storage in an off-site independent spent fuel storage installation (ISFSI) in Goodhue County, Minnesota. The license, if granted, would authorize NSP to store spent fuel in a dry storage cask system.

Notice is hereby given that, as set forth in the Atomic Safety and Licensing Board's Memorandum and Order (Schedules for Further Filings and for Prehearing Conference) (LBP–96–22), dated October 24, 1996, a prehearing conference will be conducted beginning on Tuesday, December 17, 1996, at the Minnesota Public Utilities Commission, Large Hearing Room, Metro Square Building, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101–2147. The conference will commence at 9:30 a.m. on December 17, 1996, and will continue, to the extent necessary, at 9:00 a.m. on December 18 and 19, 1996, at the same location.

At the conference, the Licensing Board will consider the seven petitions for leave to intervene and requests for a hearing filed by various entities between September 25, 1996 and October 17, 1996, together with supplements to those petitions scheduled to be filed no later than November 25, 1996, including the standing of various petitioners and each of their proffered contentions. The Board will also consider potential scheduling for various aspects of the proceeding, should the Board determine that a hearing is to be authorized. Members of the public are invited to attend the conference but may not otherwise participate.

During the subsequent course of the proceeding, if a hearing is authorized, persons who are not parties to the proceeding will be invited to submit limited appearance statements, either in writing or orally, with regard to the ISFSI application, as permitted by 10 CFR 2.715(a). These statements do not constitute testimony or evidence in this proceeding but may help the Board and/or parties in their deliberations as to the boundaries of the issues to be considered. Oral statements will not be heard at the December 17–19 prehearing conference but will be heard at later sessions of the proceeding. Written statements may be submitted at any time. Written statements, or requests for oral statements, should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington DC 20555, Attn: Docketing and Service Branch. A copy of such statement or request should also be served on the Chairman of this Atomic Safety and Licensing Board, T3 F23, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington DC 20555, and at the local public document room at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Rockville, Maryland, November 1, 1996.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

*Chairman, Administrative Judge.*

[FR Doc. 96–28583 Filed 11–6–96; 8:45 am]

**BILLING CODE 7590–01–P**

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**[Docket No. 040–08948]**

## Extension of Public Comment Period on Draft Environmental Impact Statement for Decommissioning of the Shieldalloy Metallurgical Corporation Cambridge, Ohio, Facility

**AGENCY:** Nuclear Regulatory Commission.

On July 25, 1996, the U.S. Nuclear Regulatory Commission announced in the Federal Register the availability for public comment of a draft environmental impact statement (DEIS) that evaluates the potential environmental impacts and alternatives associated with Shieldalloy Metallurgical Corporation's (SMC) proposed approach for decommissioning the SMC facility in Cambridge, Ohio (61 FR 38789). The end of the comment period was stated to be ninety (90) days from the date on which the U.S. Environmental Protection Agency (EPA) notice was published in the Federal Register stating that the DEIS had been filed with the EPA. The EPA noticed availability of the DEIS on August 2, 1996 (61 FR 40414). Consequently, the end of the public comment period became October 31, 1996.

NRC has received several requests to extend the comment period for the DEIS. NRC's regulations in 10 CFR 51.73 permit the staff to grant reasonable requests for extensions of time of up to fifteen (15) days. In this case, the staff is granting a longer extension because of several requests to do so, including one from the State of Ohio. With this notice, NRC is granting a thirty (30) day extension of the comment period to November 30, 1996.

**ADDRESSES FOR THE DEIS:** A single copy of the DEIS (NUREG–1543) may be requested by those considering public comment by writing to the NRC Publications Section, ATTN.: Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082, or by calling 202–512–1800. A copy of the DEIS is available for inspection and/or copying in the NRC Public Document Room, 2120 L St. NW., Washington, DC 20555–0001. A copy is also available for public inspection at the Guernsey County District Library, 800 Steubenville Avenue, Cambridge, Ohio 43725–2385.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Kennedy, Low-Level Waste and Decommissioning Projects Branch, Mail Stop T–7F27, Division of Waste Management, Office of Nuclear Material

Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone 301/415–6668.

Dated at Rockville, Maryland, this 31st day of October 1996.

For the Nuclear Regulatory Commission.

Michael F. Weber,

*Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 96–28641 Filed 11–06–96; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL RATE COMMISSION

**[Docket No. A97–3; Order No. 1138]**

### In the Matter of: Templeville, Maryland 21670; (Catherine J. Everett, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued November 1, 1996.

*Docket Number:* A97–3

*Name of Affected Post Office:* Templeville, Maryland 21670

*Name(s) of Petitioner(s):* Catherine J. Everett, et al.

*Type of Determination:* Closing

*Date of Filing of Appeal Papers:* October 30, 1996

*Categories of Issues Apparently Raised:*

1. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

*The Commission orders:*

(a) The Postal Service shall file the record in this appeal by November 14, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

*Secretary.*

Appendix

Templeville, Maryland 21670; Docket No. A97–3

October 30, 1996—Filing of Appeal letter

November 1, 1996 Commission Notice and Order of Filing of Appeal

November 25, 1996—Last day of filing of petitions to intervene [see 39 C.F.R. 3001.111(b)]

December 4, 1996—Petitioners' Participant Statement or Initial Brief [see 39 C.F.R. 3001.115(a) and (b)]

December 24, 1996—Postal Service's Answering Brief [see 39 C.F.R. 3001.115(c)]

January 8, 1997—Petitioners' Reply Brief should Petitioner choose to file one [see 39 C.F.R. 3001.115(d)]

January 15, 1997—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. 3001.116]

February 27, 1997—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)]

[FR Doc. 96–28671 Filed 11–6–96; 8:45 am]

**BILLING CODE 7710–FW–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Expanded Cargo Transfer Flexibility at Alaska International Airports

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Final Order, Docket OST–96–1600, Order 96–11–2.

**SUMMARY:** The Department is finalizing its Show Cause Order 96–9–19, concerning an application filed by the State of Alaska, the Anchorage International Airport, and the Fairbanks International Airport. The Department is granting (except as noted below) all foreign air carriers which hold currently effective Department authority to engage in scheduled foreign air transportation of cargo (whether under authorizations permitting combination or all-cargo services), exemption authority under 49 U.S.C. 41301 to engage in the following cargo transfer activities at Anchorage and Fairbanks International Airports: (1) To transfer cargo from any of their aircraft to any of their other aircraft, provided that both aircraft are operating to/from a point in the carrier's homeland; (2) to make changes, at points in Alaska, in the type or number of aircraft used to transport cargo, provided that in the outbound direction the transportation beyond Alaska is a continuation of the transportation from the carrier's homeland to Alaska, and in the inbound direction, the transportation to the carrier's homeland is a continuation of the transportation from behind Alaska; (3) to commingle cargo moving in foreign air transportation with cargo traffic not moving in foreign air transportation; (4) to discharge cargo in Alaska for transfer to a U.S. carrier for onward carriage to a final destination in the United States or in a third country, and to uplift from Alaska cargo transferred from a U.S. carrier which was transported by that carrier to Alaska from a point of origin elsewhere in the United States or in a third country; and (5) to discharge cargo in Alaska for transfer to another foreign carrier for onward carriage to a final destination in a third country, and to uplift from Alaska cargo transferred from another foreign carrier which was transported by that carrier to Alaska from a point of origin in a third country. Grant of this authority also applies to any foreign air carriers which receive Department authority to engage in scheduled foreign air transportation of cargo (whether under authorizations permitting combination or all-cargo services) during the period this exemption is in effect. However, this authority does not apply to foreign air carriers of Japan and the United Kingdom, since the United States is actively engaged in critical, comprehensive efforts aimed at forging new, more competitive bilateral aviation agreements with both of these important trading partners. The authority is effective for one year from the issue date of the Department's order.

**FOR FURTHER INFORMATION CONTACT:** George Wellington, Foreign Air Carrier Licensing Division, U.S. Department of Transportation, Room 6412, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone (202) 366–2391.

Dated: November 1, 1996.

Charles A. Hunnicutt,

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 96–28649 Filed 11–6–96; 8:45 am]

**BILLING CODE 4910–62–P**

## Federal Aviation Administration

### Notice To Prepare a Supplemental Environmental Impact Statement and To Conduct Environmental Scoping for Proposed Implementation of Changes to Air Traffic Control Noise Abatement Procedures and Associated Noise Compatibility Program Mitigation at Indianapolis International Airport, Indianapolis, IN

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice to hold a public scoping meeting.

**SUMMARY:** The Federal Aviation Administration (FAA) is issuing notice to advise the public that a Supplemental Environmental Impact Statement (SEIS) to the 1992 Final Environmental Impact Statement (FEIS) for Master Plan Development will be prepared. The SEIS will consider the proposed revision and implementation of air traffic control noise abatement procedures and associated noise compatibility program mitigation measures at Indianapolis International Airport. In order that all significant issues related to the proposed action are identified, public scoping meetings will be held.

**FOR FURTHER INFORMATION CONTACT:** Presscott Synder, Community Planner, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (708) 294–7538.

**SUPPLEMENTARY INFORMATION:** The FAA is preparing a SEIS for proposed changes in air traffic procedures for capacity and noise abatement, including related noise compatibility program mitigation measures at Indianapolis International Airport. These modify existing noise abatement procedures and mitigation measures proposed in the 1992 FEIS for master plan development approved by FAA on May 21, 1992. The FEIS was subject to a Record of Decision which was approved on June 30, 1992.

Comments and suggestions are invited from Federal, State and local agencies and other interested parties to ensure that the full range of issues related to the proposed action are addressed and all significant issues identified. Copies of a scoping document with additional detail, can be obtained by contacting the FAA informational contact listed above. Comments and suggestions may be mailed to the same address.

Comments and suggestions may be mailed to the FAA informational contact listed above by January 15, 1997.

Public Scoping Meeting: To facilitate receipt of comments, two public scoping meetings will be held on Thursday, December 12, 1996. The first meeting will be held between 10:00 a.m. and 12:00 p.m. for Federal, State and local agencies in the Indianapolis Airport Authority Board Room, Terminal Building, Indianapolis International Airport, Indianapolis, Indiana. The second meeting will be held from 6:00 p.m. to 8:00 p.m. for local public officials and other interested parties at Decatur Central High School, Cafeteria, 5251 Kentucky Avenue, Indianapolis, Indiana.

Issued in Des Plaines, Illinois on October 31, 1996.

Phillip M. Smithmeyer,

*Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.*

[FR Doc. 96–28665 Filed 11–6–96; 8:45 am]

**BILLING CODE 4910–13–M**

### Approval of Noise Compatibility Program, Snohomish County Airport/ Paine Field, Snohomish County, Washington

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Airport Manager of the Snohomish County Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96–52 (1980). On April 5, 1996, the FAA determined that the noise exposure maps submitted by the airport manager under Part 150 were in compliance with applicable requirements. On October 2, 1996, the Associate Administrator for Airports approved the Snohomish County Airport noise compatibility program. All of the program elements were approved.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the Snohomish County Airport noise compatibility program is October 2, 1996.

**FOR FURTHER INFORMATION CONTACT:** Dennis G. Ossenkop; Federal Aviation Administration; Northwest Mountain Region; Airports Division, ANM–611; 1601 Lind Avenue, S.W., Renton, Washington, 98055–4056. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the noise compatibility program for Snohomish County Airport, effective October 2, 1996. Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such a program to be developed in consultation with interested and affected parties including the state, local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types of classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval

is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Seattle, Washington.

Snohomish County Airport submitted to the FAA the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted at Snohomish County Airport. The Snohomish County Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 5, 1996. Notice of this determination was published in the Federal Register on April 15, 1996.

The Snohomish County Airport noise compatibility program contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2000. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on April 5, 1996, and was required by a provision of the Act of approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 7 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective October 2, 1996. Outright approval was granted for all program elements.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on October 2, 1996. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Snohomish County Airport.

Issued in Renton, Washington on October 17, 1996.

Lowell H. Johnson,

*Manager, Airports Division, Northwest Mountain Region.*

[FR Doc. 96–28664 Filed 11–6–96; 8:45 am]

BILLING CODE 4910–13–M

## Maritime Administration

**[Docket No. MSP–001]**

## Crowley American Transport, Inc.; Notice of Application Pursuant to Section 656 of the Merchant Marine Act, 1936, as Amended

Crowley American Transport, Inc. (Crowley), by application received October 16, 1996, and supplemented October 30, 1996 applied under Section 651, Subtitle B, of the Act for participation in the Maritime Security Program (MSP). In support of its application Crowley submitted information pertaining to its level of noncontiguous domestic trade service as required by section 656 of the Act. Applicants which wish to receive MSP payments must describe their level of noncontiguous domestic service as provided for in section 656. Pursuant to section 656 of the Act, the Maritime Administration must determine Crowley's level of noncontiguous domestic trade service should it become party to a MSP operating agreement.

Crowley certified that its list of unscheduled tug and barge service provided in support of its application listed all the equipment for service between points in Alaska south of the Artic Circle and points in the contiguous 48 States, dedicated and actually utilized in that service in the two-year period preceding July 1, 1992. In addition, Crowley stated that service between San Juan and the U.S. Gulf was for the one-year period preceding August 9, 1995. Crowley's submittal of noncontiguous domestic trade service (Table I) as well as its affiliate, Crowley Marine Services, Inc. (Table II) was provided.

TABLE I.—CROWLEY AMERICAN TRANSPORT, INC., NONCONTIGUOUS TRADE—PUERTO RICO

| Barge vessel * | TEU capacity | Voyages | Itinerary |
|---|---|---|---|
| EL CONQUISTADOR | 796 | 16 | Lake Charles-San Juan. |
| | | 7 | Jacksonville-San Juan. |
| EL REY | 796 | 30 | Jacksonville-San Juan. |
| FORTALEZA | 1,024 | 26 | Jacksonville-San Juan. |
| | | 3 | Petty's Is., NJ-San Juan. |
| JACKSONVILLE | 1,024 | 23 | Jacksonville-San Juan. |
| | | 3 | Petty's Is., NJ-San Juan. |
| LA PRINCESA | 796 | 18 | Jacksonville-San Juan. |
| | | 9 | Lake Charles-San Juan. |
| LA REINA | 796 | 20 | Lakes Charles-San Juan. |
| | | 2 | Jacksonville-San Juan. |
| MIAMI | 1,024 | 18 | Petty's Is., NJ-San Juan. |
| | | 7 | Jacksonville-San Juan. |
| PONCE | 1,024 | 19 | Petty's Is., NJ-San Juan. |
| | | 7 | Jacksonville-San Juan. |
| SAN JUAN | 1,024 | 20 | Jacksonville-San Juan. |
| | | 8 | Petty's Is., NJ-San Juan. |
| SANTO DOMINGO | 235 | 2 | Jacksonville-San Juan. |

TABLE I.—CROWLEY AMERICAN TRANSPORT, INC., NONCONTIGUOUS TRADE—PUERTO RICO—Continued

| Barge vessel* | TEU capacity | Voyages | Itinerary |
|---|---|---|---|
| BARGE 409 | 208 | 4 | Jacksonville-San Juan. |
| | | 2 | Lake Charles-San Juan. |
| | | 1 | Petty's Is., NJ-San Juan. |
| BARGE 417 | 208 | 2 | Jacksonville-San Juan. |
| BARGES 500–1 & 500–3 | As provided by the grandfather provision of the Maritime Security Act, Section 4(h)(1)(A), allowing two barges each of 185 trailers and 100 automobiles, the Barges 500–1 and 500–3 have operated in each of these itineraries, since August 9, 1995. | | |

*All the named barges are accompanied by a tugboat for propulsion.

TABLE II.—CROWLEY MARINE SERVICES, INC. (AN AFFILIATED COMPANY OF APPLICANT)

| Barge Vessel* | Voyages | Capacity | | | | | | | Itinerary |
|---|---|---|---|---|---|---|---|---|---|
| | | DWT | TEU | CUBE | S. Ton | BBL | Trailer | Ratio | |
| **Scheduled Tug and Barge Service** | | | | | | | | | |
| BARGE 250–6 | 1 | 12,500 | ..... | 42,500 | 3,000 | ..... | ..... | ..... | Seatt.-Capt. Bay, Nyknek, Dill, Bethel. |
| BARGE 410 | 1 | 12,500 | ..... | 42,500 | 5,500 | ..... | ..... | ..... | Seatt.-Nak, Capt. Bay, Dill, Bethel, Nome. |
| BARGE MCKINLEY | 1 | 9,100 | ..... | 32,300 | 4,500 | ..... | ..... | ..... | Seatt.-Nak, Kotz, Dill, Bethel, Nome. |
| BARGE 400 | 1 | 12,500 | ..... | 42,500 | 5,500 | ..... | ..... | ..... | Seatt.-Nak, Kotz, Lower Yukon. |
| BARGE 417 | 1 | 12,500 | ..... | 42,500 | 5,500 | ..... | ..... | ..... | Seatt.-Naknet, Dill, Bethel, Nome, Kotz. |
| BARGE 400 | 1 | 12,500 | ..... | 42,500 | 5,500 | ..... | ..... | ..... | Seatt.-Nome, Kotz, Wainwright, Barrow. |
| BARGE 500–1 | 17 | 13,392 | 460 | ..... | ..... | ..... | 105 | 50 | Seatt.-Whittier. |
| BARGE 500–3 | 17 | 13,392 | 460 | ..... | ..... | ..... | 105 | 50 | Seatt.-Whittier. |
| BARGE 414 | 13 | 12,500 | 250 | ..... | ..... | ..... | ..... | 50 | Seatt.-Whittier. |
| BARGE ATKA | 12 | 12,500 | 250 | ..... | ..... | ..... | ..... | 35 | Seatt.-Whittier. |
| BARGE 407 | 8 | 12,500 | 250 | ..... | ..... | ..... | ..... | 50 | Seatt.-Whittier. |
| BARGE 411 | 3 | 12,500 | 250 | ..... | ..... | ..... | ..... | 35 | Seatt.-Whittier. |
| BARGE KODIAK | 2 | 9,100 | 175 | ..... | ..... | ..... | ..... | ..... | Seatt.-Whittier. |
| **Unscheduled Tug and Barge Service** | | | | | | | | | |
| BARGE 450–10 | ..... | 16,200 | ..... | ..... | ..... | ..... | ..... | ..... | Alask-Hawaii. |
| BARGE 250–11 | ..... | 5,970 | ..... | 16,150 | 3,000 | ..... | ..... | ..... | Concord, CA-Valdez, Alaska. |
| BARGE ISLA BONITA | ..... | 12,500 | ..... | 42,500 | 5,500 | ..... | ..... | ..... | Concord,CA-Valdez, Alaska. |
| BARGE ALASKA | ..... | 13,185 | ..... | ..... | 12,500 | ..... | ..... | ..... | Nikiski-Sacramento, Rivergate. |
| BARGE OREGON | ..... | 13,185 | ..... | ..... | 12,500 | ..... | ..... | ..... | Nikiski-Sacramento, Rivergate. |
| BARGE HAWAII | ..... | 15,999 | ..... | ..... | 12,000 | ..... | ..... | ..... | Nikiski-Sacramento, Rivergate. |
| BARGE CORDOVA | ..... | 9,100 | ..... | 32,300 | 4,500 | ..... | ..... | ..... | Portland-Dutch Harbor. |
| BARGE 407 | ..... | 12,500 | ..... | 42,500 | 5,500 | ..... | ..... | ..... | San Juan-Gulf. |
| BARGE 450–10 | ..... | 16,200 | ..... | ..... | ..... | 149,000 | ..... | ..... | Seatt.-Anchorage, Alaska. |
| BARGE 450–3 | ..... | 16,200 | ..... | ..... | ..... | 149,000 | ..... | ..... | Seatt.-Anchorage, Alaska. |
| BARGE 450–11 | ..... | 16,200 | ..... | ..... | ..... | 149,000 | ..... | ..... | Seatt.-Anchorage, Alaska. |
| BARGE 450–7 | ..... | 16,200 | ..... | ..... | ..... | 149,000 | ..... | ..... | Seatt.-Anchorage, Alaska. |
| BARGE 102 | ..... | 16,200 | ..... | ..... | ..... | 149,000 | ..... | ..... | Seatt.-Anchorage, Alaska. |
| BARGE 450–6 | ..... | 16,200 | ..... | ..... | ..... | 149,000 | ..... | ..... | Seatt.-Anchorage, Nikiski, AK. |
| BARGE 450–10 | ..... | 16,200 | ..... | ..... | ..... | 149,000 | ..... | ..... | Seatt.-Capt. Bay, Alaska. |
| BARGE MCKINLEY | ..... | 9,100 | ..... | 32,300 | 4,500 | ..... | ..... | ..... | Seatt.-Dutch Harbor. |
| BARGE 250–3 | ..... | 5,970 | ..... | 16,150 | 3,000 | ..... | ..... | ..... | Seatt.-Dutch Harbor. |
| BARGE KETCHIKAN | ..... | 9,100 | ..... | 32,300 | 4,500 | ..... | ..... | ..... | Seatt.-Dutch Harbor. |
| BARGE 450–11 | ..... | 16,200 | ..... | ..... | ..... | 149,000 | ..... | ..... | Seatt.-Dutch Harbor, Alaska. |
| BARGE 250–10 | ..... | 5,330 | ..... | ..... | ..... | 49,999 | ..... | ..... | Seatt.-Juneau, Alaska. |
| BARGE 450–7 | ..... | 16,200 | ..... | ..... | ..... | 149,000 | ..... | ..... | Seatt.-Ketchikan, Alaska. |
| BARGE 450–10 | ..... | 16,200 | ..... | ..... | ..... | 149,000 | ..... | ..... | Seatt.-Nikiski, Alaska. |
| BARGE 450–11 | ..... | 16,200 | ..... | ..... | ..... | 149,000 | ..... | ..... | Seatt.-Nikiski, Alaska. |
| BARGE 450–3 | ..... | 16,200 | ..... | ..... | ..... | 149,000 | ..... | ..... | Seatt.-Nikiski, Alaska. |
| BARGE 450–7 | ..... | 16,200 | ..... | ..... | ..... | 149,000 | ..... | ..... | Seatt.-Nikiski, Alaska. |
| BARGE 450–6 | ..... | 16,200 | ..... | ..... | ..... | 149,000 | ..... | ..... | Seatt.-Nikiski, Alaska. |
| BARGE 101 | ..... | 11,400 | ..... | ..... | ..... | 103,968 | ..... | ..... | Seatt.-Nikiski, Alaska. |

TABLE II.—CROWLEY MARINE SERVICES, INC. (AN AFFILIATED COMPANY OF APPLICANT)—Continued

| Barge Vessel* | Voyages | Capacity | | | | | | | Itinerary |
|---|---|---|---|---|---|---|---|---|---|
| | | DWT | TEU | CUBE | S. Ton | BBL | Trailer | Ratio | |
| BARGE 151 | ..... | 1,500 | ..... | 3,060 | 750 | 10,000 | ..... | ..... | Seatt.-Nome, Kotz, Capt. Bay, W. AK. |
| BARGE 152 | ..... | 1,500 | ..... | 3,060 | 750 | 10,000 | ..... | ..... | Seatt.-Nome, Kotz, Capt. Bay, W. AK. |
| BARGE 154 | ..... | 1,500 | ..... | 3,060 | 750 | 10,000 | ..... | ..... | Seatt.-Nome, Kotz, Capt. Bay, W. AK. |
| BARGE 160–1 | ..... | 1,500 | ..... | 3,060 | 750 | 10,000 | ..... | ..... | Seatt.-Nome, Kotz, Capt. Bay, W. AK. |
| BARGE 160–4 | ..... | 1,500 | ..... | 3,060 | 750 | 10,000 | ..... | ..... | Seatt.-Nome, Kotz, Capt. Bay, W. AK. |
| BARGE 450–10 | ..... | 16,200 | ..... | ..... | ..... | 149,000 | ..... | ..... | Seatt.-Nome,Kotz, Capt. Bay, W. AK. |
| BARGE 101 | ..... | 11,400 | ..... | ..... | ..... | 103,968 | ..... | ..... | Seatt.-Nome, Kotz, Capt. Bay, W. AK. |
| BARGE 250–10 | ..... | 5,330 | ..... | ..... | ..... | 49,983 | ..... | ..... | Seatt.-Nome, Kotz, Capt. Bay, W. AK. |
| BARGE 570 | ..... | 7,910 | ..... | ..... | 3,000 | 52,938 | ..... | ..... | Seatt.-Nome, Kotz, Capt. Bay, W. AK. |
| BARGE MALOLO | ..... | 9,100 | ..... | 32,300 | 4,500 | ..... | ..... | ..... | Vancouver, WA-Anchorage, Alaska. |

*All the named barges are accompanied by a tugboat for propulsion.

Any person, firm or corporation having any interest in the application for section 656 consent and desiring to submit comments concerning Crowley's request must by 5:00 PM (30 days after the date of publication) file comments in triplicate to the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

By Order of the Maritime Administrator.

Dated: November 4, 1996.

Joel C. Richard,

*Secretary, Maritime Administration.*

[FR Doc. 96–28775 Filed 11–6–96; 8:45 am]

**BILLING CODE 4910–81–P**

## Surface Transportation Board

**[STB Docket No. AB–290 (Sub-No. 180X)]**

## Norfolk and Western Railway Company—Abandonment Exemption—in McDowell County, WV

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 2.5-mile line of its railroad from milepost T–16.0 at Pageton and milepost T–18.5 at Anawalt, in McDowell County, WV.[1]

NW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 7, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by November 18, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 27, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 12, 1996. Interested

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. The applicant in its verified notice, indicated a proposed consummation date of December 6, 1996. However, because the verified notice was filed on October 18, 1996, consummation should have not been proposed to take place prior to December 7, 1996. Applicant's representative has been contacted and has confirmed that the correct consummation date is on or after December 7, 1996.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 1, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

*Secretary.*

[FR Doc. 96–28769 Filed 11–6–96; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

October 21, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below in early November 1996, the Department of Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by October 30, 1996. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

*OMB Number:* 1545–1432.
*Project Number:* M:SP:V 96–0021–G.
*Type of Review:* Revision.
*Title:* Employer Identification Number (EIN) Public Education Packet Customer Opinion Survey.

*Description:* To track the effects of compliance, IRS plans to conduct a study where taxpayers requesting information about the regulations and requirements for starting a new business in Buffalo and Seattle will receive a newly-developed information packet on EIN. The packets will contain an SS–4, Application for Employer Identification Number, and EIN information sheet, several publications, and a customer opinion survey. IRS plans to distribute the packets for approximately one year. Since the compliance test will take two years to complete, IRS will use the customer opinion survey to get an early indication of how the education effort is working and suggestions for improving the packet.

*Respondents:* Individuals or households, business or other for-profit.
*Estimated Number of Respondents:* 6,500.
*Estimated Burden Hours Per Respondent:* 2 minutes.
*Frequency of Response:* Other.
*Estimated Total Reporting Burden:* 152 hours.
*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports Management Officer.*

[FR Doc. 96–28644 Filed 11–6–96; 8:45 am]

BILLING CODE 4830–01–P

### Submission to OMB for Review; Comment Request

October 29, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

*OMB Number:* 1545–1466.
*Form Number:* None.
*Type of Review:* Extension.
*Title:* Third-Party Disclosure Requirements in IRS Regulations.

*Description:* This submission contains third-party disclosure regulations subject to the Paperwork Reduction Act of 1995.

*Respondents:* Business or other for-profit, individuals or households, not-for-profit institutions.

*Estimated Number of Respondents/ Recordkeepers:* 256,943,158.
*Estimated Burden Hours Per Respondent/Recordkeeper:* Various.
*Frequency of Response:* Annually.
*Estimated Total Reporting/ Recordkeeping Burden:* 86,331,267 hours.
*Clearance Officer:* Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Alexander T. Hunt, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports Management Officer.*

[FR Doc. 96–28645 Filed 11–6–96; 8:45 am]

BILLING CODE 4830–01–P

### Submission for OMB Review; Comment Request

October 29, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below in January 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by November 4, 1996. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

*OMB Number:* 1545–1432.
*Project Number:* M:SP:V 96–005–G.
*Type of Review:* Revision.
*Title:* Installment Agreement Customer Satisfaction Survey.

*Description:* In July 1994 the Acting Regional Inspector Southwest for Internal Audit reported that there were some weaknesses in the streamlined installment agreement process that was implemented during the 1993 filing season. The streamlined installment agreement allowed taxpayers to request payment of their taxes through an installment agreement by attaching a

Form 9465 at the time they filed their tax return. A review of installment requests in the Ogden, Austin and Fresno Service Centers revealed that installment agreements are being granted even though the taxpayer may fail to under the cause of the balance due or what actions need to be addressed to prevent the situation from recurring in the future.

The purpose of this survey is to determine the reasons taxpayers request installment agreements and what role the streamlined installment agreements can have in helping taxpayers meet their tax obligations in the future.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 1,650.

*Estimated Burden Hours Per Respondent:* 5 minutes.

*Frequency of Response:* Other.

*Estimated Total Reporting Burden:* 138 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports Management Officer.*

[FR Doc. 96–28646 Filed 11–6–96; 8:45 am]

**BILLING CODE 4830–01–P**

## Submission to OMB for Review; Comment Request

October 29, 1996.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

*OMB Number:* 1545–0153.

*Form Number:* IRS Form 3206.

*Type of Review:* Extension.

*Title:* Information Statement by United Kingdom Withholding Agents Paying Dividends From U.S. Corporations to Residents of the United States and Certain Treaty Countries.

*Description:* The form is used to report dividends paid by U.S. corporations through United Kingdom nominees to beneficial owners who are residents of countries other than the United Kingdom with which the United States has a tax treaty providing for reduced withholding rates on dividends. The data is used by IRS to determine whether the proper amount of income tax was withheld.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents/ Recordkeepers:* 5,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 4 hours, 6 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 15,620 hours.

*OMB Number:* 1545–0718.

*Form Number:* IRS Form 941–M.

*Type of Review:* Extension.

*Title:* Employer's Monthly Federal Tax Return.

*Description:* Form 941–M is used by certain employers to report payroll taxes on a monthly rather than quarterly basis. Employers who have failed to file Form 941 or who have failed to deposit taxes as required are notified by the District Director that they must file Form 941–M monthly.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents/ Recordkeepers:* 1,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—11 hrs., 43 min.

Learning about the law or the form—24 min.

Preparing, copying, assembling, and sending the form to the IRS—36 min.

*Frequency of Response:* Monthly.

*Estimated Total Reporting/ Recordkeeping Burden:* 152,640 hours.

*Clearance Officer*: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports Management Officer.*

[FR Doc. 96–28647 Filed 11–6–96; 8:45 am]

**BILLING CODE 4830–01–P**

## Submission for OMB Review; Comment Request

November 1, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, N.W., Washington, D.C. 20220.

U.S. Secret Service (USSS)

*OMB Number:* 1555–0001.

*Form Number:* SSF 86A.

*Type of Review:* Extension.

*Title:* Supplemental Investigative Data.

*Description:* Respondents are all Secret Service applicants. These applicants, if approved for hire, will require a Top Secret Clearance, and possibly SCI Access. Responses to questions on the SSF 86A yields information necessary for the adjudication for eligibility of the clearance, as well as ensuring that applicant meets all internal agency requirements.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 7,500.

*Estimated Burden Hours Per Respondent:* 1 hour.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 7,500 hours.

*Clearance Officer:* Sandy Bigley (202) 435–7025, U.S. Secret Service, Room 670, 1310 L Street, N.W., Washington, DC 20005.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports Management Officer.*

[FR Doc. 96–28648 Filed 11–6–96; 8:45 am]

**BILLING CODE 4810–42–P**

## Fiscal Service

**[Dept. Circ. 570, 1996—Rev., Supp. No. 2]**

## Surety Companies Acceptable on Federal Bonds; Change of Name, Skandia America Reinsurance Corporation

Skandia America Reinsurance Corporation, a Delaware corporation, has formally changed its name to Odyssey Reinsurance Corporation, effective July 19, 1996. The Company was last listed as an acceptable surety

on Federal bonds at 60 FR 34306, June 30, 1996.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to Odyssey Reinsurance Corporation, Dover, Delaware. This new certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $22,931,000 established for the Company as of July 1, 1996, remains unchanged until June 30, 1997.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1996 Revision, at page 34306 to reflect this change.

The Circular may be viewed or downloaded by calling the U.S. Department of the Treasury, Financial Management Service, computerized public bulletin board system (FMS Inside Line) at (202) 874–6817/7034/6953/6872. A hard copy may be purchased from the Government Printing Office (GPO), Washington, DC, telephone (202) 512–0132. When ordering the Circular from GPO, use the following stock number: 048–000–00489–0.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–6696.

Dated: October 29, 1996.

Charles F. Schwan, III,

*Director, Funds Management Division, Financial Management Service.*

[FR Doc. 96– 28586 Filed 11–6–96; 8:45 am]

BILLING CODE 4810–35–M

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition

Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the act of October 19, 1965 (76 Stat. 98522 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order no. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the object to be included in the exhibit ''Faberge and Finland: Exquisite Objects'' (see list,*) imported from abroad for temporary exhibition without profit within the United States, is of cultural significance. This object is imported pursuant to a loan agreement with a foreign lender. I also determine that the temporary exhibition or display of the listed exhibit object at the Corcoran Gallery of Art, Washington, D.C., beginning on or about November 11, 1996, to on or about January 5, 1997, is in the national interest.

Public notice of these determinations is ordered to be published in the Federal Register.

Dated: November 4, 1996.

Les Jin,

*General Counsel.*

[FR Doc. 96–28753 Filed 11–6–96; 8:45 am]

BILLING CODE 8230–01–M

* A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel, U.S. Information Agency. The telephone number is 202/619–6084; the address is USIA, 301–4th Street, S.W., Room 700, Washington, D.C. 20547.

Federal Register

Thursday
November 7, 1996

Part II

# Department of Health and Human Services

## Food and Drug Administration

**21 CFR Part 530**

**Extralabel Drug Use in Animals; Final Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 530**

**[Docket No. 96N–0081]**

**RIN 0910–AA47**

## Extralabel Drug Use in Animals

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final rule to allow veterinarians to prescribe extralabel uses of certain approved animal drugs and approved human drugs for animals. This action implements the Animal Medicinal Drug Use Clarification Act of 1994 (the AMDUCA). This rule will provide veterinarians greater flexibility for using approved drugs for animal use.

**DATES:** This final rule is effective December 9, 1996.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Arkin, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1737.

**SUPPLEMENTARY INFORMATION:**

I. Background

On October 22, 1994, the President signed into law the AMDUCA (Pub. L. 103–396). Prior to enactment of the AMDUCA, section 512 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b) had provided that a new animal drug (NAD) was deemed unsafe unless it was subject to an approved application and the drug, its labeling and its use conform to such approved application. Therefore, use of an NAD without an approved application or in a manner different from that set forth in an approved application resulted in the drug being unsafe under the act. Section 501(a)(5) of the act (21 U.S.C. 351(a)(5)) provides that a drug deemed to be unsafe under section 512 of the act is adulterated. The AMDUCA allows veterinarians to prescribe extralabel uses of approved animal drugs and approved human drugs for animals.

The provisions of the AMDUCA relating to extralabel use of approved NAD's provide that such use must be in accordance with conditions specified by the Secretary of Health and Human Services (the Secretary) by regulations. The animal drug provisions also include several safeguards in allowing veterinarians to prescribe drugs for extralabel uses: (1) If the Secretary finds there is a reasonable probability that an extralabel use may present a risk to the public health, the Secretary may establish a safe level for a residue for such extralabel use by regulation or order, and may require the development of analytical methods for residue detection; (2) the Secretary may, by general regulation, provide access to records of veterinarians to ascertain any use or intended use that the Secretary determines may present a risk to the public health; and (3) if the Secretary finds, after affording an opportunity for public comment, that an extralabel animal drug use presents a risk to the public health or that no acceptable analytical method has been developed and submitted, the Secretary may prohibit such extralabel use by order. In addition, the AMDUCA provides that an extralabel use of an approved NAD is not permitted if there is an approved animal drug with the same active ingredient, dosage form, and concentration provides for that different use.

The AMDUCA also allows veterinarians to prescribe approved human drugs for use in animals under conditions specified by the Secretary by regulations. The human drug provisions do not, however, contain the express conditions set out in the statute for extralabel use of approved NAD's.

The AMDUCA adds a new section 301(u) to the act (21 U.S.C. 331(u)) which provides that failure to comply with the regulations or orders implementing the AMDUCA is a prohibited act. The AMDUCA amends section 301(e) of the act to provide that failure to maintain records or provide access to records of veterinarians, as provided by general regulations, is a prohibited act. In addition, the AMDUCA amends section 512(l) of the act to require drug sponsors to keep records and make reports regarding extralabel uses.

Neither the AMDUCA nor the implementing regulations are intended to lessen the responsibility of the manufacturer, the veterinarian, or the food producer with regard to violative drug residues or other adverse impact on human health. Under the act and this final rule, any amount of residue that may present a risk to the public health resulting from an extralabel use would constitute a violation of the act subject to enforcement action, if a safe level or tolerance has not been established. Residue exceeding an established safe level would also constitute a violation of the act, as would residue resulting from an extralabel use where the residue exceeds an established tolerance. The provisions of the AMDUCA are effective upon adoption of a final rule implementing the statute. The AMDUCA requires publication of a final rule within 2 years of the date of enactment.

As noted in the preamble to the proposed rule, until publication of a final implementing rule makes the AMDUCA effective, extralabel use of drugs in animals continues to be a violation of the act. FDA's existing enforcement policies relating to extralabel use have been described in two FDA Compliance Policy Guides (CPG's) entitled ''Extralabel Use of New Animal Drugs in Food-Producing Animals'' and ''Human-Labeled Drugs Distributed and Used in Animal Medicine.'' The extralabel CPG's were issued to provide information and direction to FDA personnel in the field about the circumstances in which FDA would ordinarily take regulatory action against extralabel use of approved NAD's and human drugs in animals and those situations in which the agency would ordinarily exercise its regulatory discretion and not take action.

The scant legislative history of the AMDUCA includes evidence that the AMDUCA was intended to codify policies similar to those in FDA's CPG's . The agency has generally followed policies similar to those in the existing CPG's in this final rule. It is anticipated that these CPG's will be withdrawn after this final rule is published. FDA may, as necessary, issue additional CPG's or other guidance related to extralabel use of animal and human drugs.

II. The Proposed Rule

*A. Summary of the Proposed Rule*

In the Federal Register of May 17, 1996 (61 FR 25106), FDA published a notice of proposed rulemaking to implement the AMDUCA. The rule as proposed would apply to the extralabel use in an animal of any approved NAD or approved human drug used by or on the lawful order of a veterinarian within the context of a veterinarian-client-patient relationship. Human drugs include approved new human drugs, as well as over-the-counter (OTC) drugs marketed under OTC monographs as safe and effective and not misbranded within the meaning of 21 CFR part 330.

Consistent with the policies expressed in the CPG's, the proposed rule limited extralabel uses for food-producing animals to those that provide alternative treatment modalities when the health of an animal is threatened, or suffering or death may result from failure to treat an animal, i.e., therapeutic uses. The proposal asked for comment on requests

to permit extralabel drug use for some nontherapeutic uses, but did not provide for such uses.

The proposed rule included a number of definitions, including definitions for the phrases ''a reasonable probability that a drug's use may present a risk to the public health,'' ''use of a drug may present a risk to the public health,'' and ''use of a drug presents a risk to the public health.'' In defining these phrases, the agency considered the common meaning of the words in these phrases, and other regulations in which FDA has defined similar concepts.

The proposed rule reiterated the statutory prohibition against the advertising and promotion of extralabel drug uses. It provided for the inspection of veterinary records by FDA investigators, including records required under the act and regulations and State veterinary practice and pharmacy acts, to ascertain any extralabel use that the agency has determined may present a risk to the public health. The proposed rule specified particular extralabel uses that are not permitted, i.e., extralabel use by a lay person (except when under a veterinarian's supervision), extralabel use in or on an animal feed, extralabel use resulting in any residue which may present a risk to the public health, and extralabel use resulting in any residue above an established safe level or tolerance. The proposal also included labeling requirements. In addition, it provided conditions for compounding of approved NAD's and approved human drugs.

The proposal would require the prescribing or dispensing veterinarian to: (1) Diagnose and evaluate the conditions; (2) establish a substantially extended withdrawal period prior to marketing of milk, meat, or eggs supported by appropriate scientific information; (3) institute procedures to assure that the identity of the treated animal or animals is carefully maintained; and (4) take appropriate measures to assure that assigned timeframes for withdrawal are met and no illegal drug residues occur in any food. The proposal included some additional conditions for permitted extralabel uses in food animals of a human drug, or of an NAD approved only in use in nonfood animals.

The proposal also stated that FDA may prohibit the extralabel use of an approved new animal or human drug in food-producing animals if FDA determines that an acceptable analytical method needs to be established and this method has not been established or cannot be established, or use of the drug presents a risk to the public health. It added that a prohibition may be a general ban on the use of the drug or class of drugs, or may be limited to a specific species, indication, dosage form, route of administration, or combination of factors.

The proposed rule also included procedures for establishing and announcing safe levels, for developing analytical methods, and for issuing orders prohibiting extralabel uses of drugs in food-producing animals. The proposed rule also included provisions regarding extralabel drug use in nonfood animals.

In addition to publishing the proposed rule in the Federal Register, FDA gave notice of the publication of the proposed rule by various additional means and invited comments. The comment period for the proposed rule lasted 75 days, closing July 31, 1996. Several requests for an extension of the comment period were denied to enable the agency to meet the statutory deadline for publishing the final rule.

*B. Discussion of Comments*

FDA received approximately 110 comments on the proposed rule. A discussion of the comments and FDA's responses follows:

1. Issues on Which FDA Requested Comment

(1) The agency invited comment as to whether extralabel use should be permitted when an approved drug is found by the veterinarian to be ineffective in a particular clinical situation. The AMDUCA provides that an extralabel use of an approved animal drug is not permitted if an approved NAD with the same active ingredient in the same dosage form and concentration exists for that use. The animal drug CPG contains an exception that permits an extralabel use where the veterinarian finds, within the context of a valid veterinary-client-patient relationship, that an approved NAD is clinically ineffective for its intended use. However, neither the statute nor the proposed rule contained a similar provision.

A large number of comments contended that the regulations should provide such an exception. The comments stated that veterinarians frequently encounter clinical situations in which an approved drug is ineffective. One comment observed that approved drugs are effective under labeled conditions in most circumstances, so that it would not be inconsistent with the approval provisions of the act to provide for extralabel use in specific situations in which a drug is ineffective under labeled conditions. The comment asserted that the AMDUCA is intended to codify policies similar to those in the CPG's, such as the ''clinically ineffective'' provision.

FDA recognizes that the AMDUCA does not provide any explicit exceptions to its prohibition against extralabel drug use when an approved NAD with the same active ingredient in the same dosage form and concentration exists for that use. The agency believes, however, that not allowing extralabel drug use in situations in which the approved NAD is clinically ineffective would produce an absurd result. Under established principles of statutory construction, a statute should be construed to avoid an absurd result. (See e.g., *Rowland* v. *California Men's Colony*, 113 S. Ct. 716, 720 (1993).)

Under the act, an NAD can be found to be effective even though the drug may not be effective in treating all target animals for the labeled indication. The statute requires that there be substantial evidence that an NAD is effective for its labeled indications. The legislative history of the 1962 Amendments, which added the effectiveness standard to the act, indicated that evidence sufficient to meet the ''substantial evidence'' standard could be met where ''the studies * * * show that the drug will help a substantial percentage of patients in a given disease condition but will not be effective in other cases.'' (See S. Rept. 1744, 87th Cong. 2d sess., Part 1 at 16 (1962).) For those cases in which an approved NAD is not clinically effective, it is as if the drug does not exist for that condition. Under the AMDUCA, if there is no approved NAD for a particular condition, veterinarians are allowed to use a drug extralabelly; however, veterinarians would not be allowed to use a drug extralabelly in essentially the same situation, that is, when the approved NAD is clinically ineffective.

Therefore, the agency has concluded that, under the AMDUCA, allowing extralabel drug use when the approved NAD is clinically ineffective is legally supportable. The agency cautions, however, that veterinarians must have a basis for determining that the use of the approved NAD is clinically ineffective in the animal or animals involved. Unsupported claims of clinical ineffectiveness will not be allowed to circumvent the statutory prohibition against extralabel drug use when an approved NAD for that condition exists. Proposed § 530.20(a)(1) has been amended to provide for extralabel drug use in the case of an approved NAD that is clinically ineffective.

(2) The agency asked for comment as whether extralabel use of animal and

human drugs should be permitted for nontherapeutic uses such as improved reproductive responses in terrestrial and, especially, in aquatic food-producing animals.

More than a dozen organizations and several individuals advocated extralabel use for all reproductive purposes. One comment objected to the concept, several comments could be interpreted to be in opposition, and one other comment urged the agency to be extremely judicious in granting such an exception. Reasons advanced for allowing reproductive-related extralabel uses included: All reproductive uses are therapeutic; drugs used for reproductive purposes pose little human food safety threat, and in fact some broodstock (e.g., broodfish) can be considered nonfood animals; reproductive use of drugs is especially important in minor species (e.g., aquaculture) and other limited situations (e.g., contraceptive uses in nuisance animals and free ranging wildlife) for which few drugs are approved; and extralabel use of reproductive drugs conserves animal resources, and allows application of new technology (e.g., embryo transfer and artificial insemination).

The agency agrees that the comments have identified some important reasons for extralabel use of drugs for nontherapeutic reproductive purposes. The agency believes that some, but not all, reproductive-related drug uses are therapeutic and would be permitted under the final rule. However, after further consideration the agency has concluded that the statute is not intended to provide for extralabel use of drugs for nontherapeutic purposes. For example, Senator Coats identified the problem of the AMDUCA was intended to address as ''too few approved animal health products to treat all animal illnesses,'' as such:

> in order to treat animals adequately and to alleviate animal suffering, veterinarians must use some products in an extra-label fashion * * * [AMDUCA] is at best a short-term solution to a long-term and larger problem-the lack of drugs available to treat animals. The legislation, as it passed, will not address this problem * * * [W]e must address the larger and increasingly urgent problem of animal drug availability.

(140 Congressional Record S14272 (daily ed. October 5, 1994).)

The agency believes that including nontherapeutic uses in these final rules is beyond the scope of the AMDUCA's intent to allow the legal use of drugs extralabelly to treat animal illnesses. Allowing nontherapeutic uses would extend the AMDUCA's scope into the animal drug availability issues, issues that Congress reserved to address at another time. In this regard legislation was recently enacted, the Animal Drug Availability Act of 1996 (Pub. L. 104–250), that is intended to streamlime the animal drug approval process to increase the availability of approved animal drugs. The new legislation should decrease the need for extralabel use of drugs as more animal drug products for both therapeutic and nontherapeutic uses are approved. The agency also notes that it anticipates examining extralabel use which is not covered by the AMDUCA, such as nontherapeutic extralabel drug use, in the context of determining regulatory priorities. The agency will either issue another CPG or determine on a case-by-case basis those situations, if any, which fall outside the scope of the AMDUCA that would be of low regulatory priority.

(3) One comment, from the American Association of Swine Practitioners (AASP), advocated extralabel use for what the association called ''therapeutic preventative medicine.'' An example would be extralabel use for medicated early weaning and segregated early weaning of pigs, to avoid morbidity or death loss that can be quite high among weaned pigs if treatment is delayed until clinical signs appear. AASP noted that the preventive extralabel use is appropriate in those clinical situations in which the veterinarian is well acquainted with the production system, the profile of the animals and the diseases present or likely to occur. The agency agrees that as long as the health of the animals is threatened, extralabel uses for preventive purposes is acceptable. The proposed rule did not include the word ''immediately,'' which had appeared before the word ''threatened'' in the CPG. This change was made to make it clear that preventive uses when the health of the animal is threatened are permitted. However, the agency cautions that the veterinarian must have a rational basis, such as that cited by AASP in the case of weaned pigs, for determining that the health of the animals is actually threatened. Also, preventive extralabel use would be subject to other restrictions in the regulations, such as restrictions on extralabel use of drugs administered in feed.

(4) The agency asked for comment on appropriate ways to balance extralabel use with the need to preserve the goal of increased availability of NAD's approved for such uses under section 512 of the act. Although the agency made the request in connection with its discussion of nontherapeutic extralabel uses, the comments addressed the issue more generally.

The American Veterinary Medical Association (AVMA) stated that Congress, by permitting use of a less expensive approved human drug in companion animals when an approved NAD is available, placed higher priority on reducing costs to consumers and pet owners than on incentives for drug manufacturers. The comment stated that this emphasis is appropriate because ''the real problem of animal drug availability pertains to approved animal drugs for use in food animals.'' With regard to food animals, AVMA and AASP emphasized the need for extralabel uses for which the market is extremely small and therefore would provide little financial incentive to drug manufacturers even if extralabel use were restricted. The Animal Health Institute (AHI), which represents a number of animal drug manufacturers, focused on what it called a double standard created by the proposed regulations. According to AHI, the regulations allow the veterinarian to determine whether a drug is safe, until FDA determines otherwise; on the other hand, a drug that goes through the approval process is considered unsafe until the sponsor proves it to be safe. The comment concluded that, ''given this scenario, a company may conclude that it doesn't make business sense to expend the considerable resources necessary to prove safety (and efficacy) for new label claims.'' Other comments suggested that the agency should create incentives for drug manufacturers to submit new animal drug applications (NADA's), for example, by revising the approval requirements.

The agency recognizes the need for increased availability for animal drugs and has provided for such availability as allowed under the AMDUCA in these regulations. In addition, as indicated above, recent legislation the Animal Drug Availability Act of 1996 has been enacted to increase the availability of approved animal drugs. The legislative history indicates Congress' concern about the availability of approved drugs and discussed its intention to deal with the drug availability issue separately. With regard to the ''double standard'' comment, the regulation does not create

the standard but merely implements the statute that allows veterinarians, under regulations issued by FDA, to prescribe drugs for animals that have not undergone the full complement of studies required for the approval process. The changes requested are not within the scope of this rulemaking.

(5) The agency asked for comment with respect to a policy that would allow or encourage sponsors to provide extralabel drug use information, regarding significant adverse events, on product labeling. A number of comments supported the inclusion of information on significant adverse events related to extralabel use on a drug's labeling. The agency is continuing to explore its legal and policy options in this regard and will consider these comments during that process. Several related comments suggested that FDA should provide more publicity on the need to report adverse reactions related to extralabel use, through the existing reporting procedures for reporting adverse drug events. FDA's Center for Veterinary Medicine (CVM) has developed and distributed widely a brochure which answers a number of frequently asked questions about CVM's adverse drug experience (ADE) reporting system. The brochure specifically addresses reporting of extralabel use-associated ADE's. CVM will take other similar proactive measures as resources permit.

2. General Comments

(6) One comment suggested that although CPG 7125.06 makes a distinction between extralabel drug use in food animals versus companion animals, the proposed regulations do not appear to make this distinction. The agency believes that the regulations clearly distinguish between the extra-label requirements for food-producing animals and companion animals, and that the differences are extensive; that is part 530, subpart C contains detailed and specific provisions relating to extralabel drug use in animals intended to provide human food. On the other hand, part 530, subpart D provides minimal conditions related to extralabel drug use in animals not intended for human consumption.

(7) One comment suggested that target animal safety should be an important consideration when prescribing extralabel use of a drug. The comment suggested that the target animal safety profile of a drug should be established so that the animal being treated is not unduly exposed to risk. While considerations of target animal safety are not specifically addressed in the AMDUCA, as is food safety, the agency believes that the veterinarian is responsible for exercising professional judgment regarding animal safety in prescribing extralabel drug use. For that reason, both the CPG and the final rule require a valid veterinary-client-patient relationship to ensure that animal safety is properly taken into consideration. Therefore, the agency has not conditioned extralabel drug use on the establishment of a safety profile for the target animal.

(8) Several comments questioned FDA's conclusion that the AMDUCA does not permit the agency to restrict use of a human drug in nonfood animals even though an approved NAD may exist for the same uses. One comment pointed out that the agency found authority in the act to require use of an approved NAD in a food-producing animal before use of a human drug is permitted, and the comment argued that the agency could use the same authority to provide a similar restriction for drug use in nonfood animals. The comment stated that it would be prudent for FDA to do so to protect the safety of the target animal, because an approved NAD will bear labeling for the safe use of the NAD in the target animal, while a human drug will not have such labeling. Several comments noted that restricting use of a human drug in nonfood animals will maintain an important incentive for animal drug sponsors to pursue such approvals, especially in minor species. One comment stated that FDA's economic impact analysis does not consider the impact on small animal drug companies of allowing use of human drugs when approved animal drugs are available.

As stated in the preamble to the proposed rule, the AMDUCA's human drug provisions do not contain an express provision similar to the one that requires use of an approved animal drug as a prerequisite to extralabel use of another approved animal drug. The agency reiterates its belief that because of the broad public health implications in the treatment of food animals, it is prudent to require the use of an approved NAD if one exists. Because such broad public health implications do not apply to nonfood animals, the agency does not believe the statute supports a similar restriction for nonfood animals.

With regard to the comment concerning the economic impact analysis, the requirement that the agency analyze a proposal's economic impacts on small businesses is intended to disclose the economic burden that would be imposed on small business by the imposition of a new government regulation. Because FDA's analysis of the rule's impacts concludes with a certification that it will not have a significant economic impact on a substantial number of small entities, no further analysis is required.

(9) One comment, from AHI, advocated that FDA vigorously enforce the new regulations. A number of other comments, mostly from veterinarians' groups, indicated that enforcement against extralabel drug use should be minimal. A number of comments asked how specific provisions of the regulations would be enforced.

The agency expects that its enforcement activities related to extralabel use outside the scope of the statute will continue at approximately the same level as actions under the CPG's in the past. As in the past, the agency expects to identify areas for highest priority enforcement attention, such as prohibited uses and situations in which violative drug residue occurs in human food. Enforcement instructions to FDA's field offices will be available as they are developed in the future.

(10) A number of State and university wildlife departments asked that use of drugs in free-ranging wildlife be exempted from the AMDUCA (i.e., be allowed unrestricted extralabel use) because free-ranging feral animals are not generally classified as food animals, and because it is generally impractical to maintain the veterinary-client-patient relationship provided for in the regulation. Several comments also asked that wildlife biologists be allowed to make extralabel uses because veterinarians are not always available.

The agency understands that some free-ranging wildlife may be harvested for human food, and therefore they are considered to be food animals. Accordingly, extralabel drug use in such animals must be in conformity with the provisions of the regulation applicable to food animals. In addition, the agency believes that the timing of extralabel drug use should take into consideration periods of harvest (e.g., hunting seasons). The provisions of the regulation related to nonfood animals would apply to free-ranging wildlife that are not harvested for human food. The agency recognizes the unique applicability of the veterinary-client-patient relationship to free-ranging wildlife. The agency believes that Congress intended that veterinarians be responsible for overseeing the extralabel use of drugs. However, the agency also recognizes the significant role of wildlife biologists, typically State or Federal employees, in administering drugs to free-ranging wildlife under the general supervision of a veterinarian

who may also be a government employee and intends that such situations fall within the scope of a valid veterinary-client-patient relationship. In view of the above, the agency believes that changes to the regulations are not necessary.

(11) One comment requested confirmation from the agency that it will not delay approvals or withdraw approvals of existing NADA's, if analytical methods are not developed for detection of extralabel use. It is not the intention of the agency to delay approval of a NADA, or take action to withdraw an approved NADA, if such methods are not developed. The agency notes, however, that section 512(e)(1) of the act, as amended by the AMDUCA, provides for withdrawal of an approval of a drug as unsafe under the condition of extralabel use as authorized under section 512(a)(4)(A).

(12) One comment questioned the economic assessment on two bases: (1) Whether the costs of method development included the cost of method validation, and (2) whether the assessment included the cost of developing toxicology data in order to establish a safe level. Methods validation costs, which would range from $20,000 to $40,000 for each trial, were not included in the cost estimates in the proposal's economic assessment. Thus, the total cost for developing a method would range from $110,000 to $390,000, with an intermediate level of about $200,000 for each study. Assuming that two methods would be developed during an average year, and that one method would require a metabolism study costing $100,000, the annual cost impact would be $500,000 rather than $440,000 as estimated in the proposal. This comparatively small increase in estimated costs does not materially affect the conclusions of the economic assessment under Executive Order 12866 and the Regulatory Flexibility Act. The agency does not expect to require the development of new toxicology data in order to establish a safe level, but may rely on available data for that purpose.

(13) One comment suggested that one means of reducing the risks to public health attributed to extralabel use of drugs in animals is for the agency to proactively determine, through use of a prioritized list, the extralabel use of drugs that may cause a higher risk. The comment suggested that the regulations contain provisions for developing methods, conducting tissue residue studies, and assessing toxicity of those drugs considered most likely to present public health concerns.

FDA agrees with this comment, and believes that the AMDUCA and the final regulations essentially conform to the comment's request. The agency will continuously evaluate information relating to extralabel uses. If FDA should have concerns regarding a particular extralabel use (i.e., if the agency finds that there is ''a reasonable probability that a drug's use may present a risk''), the agency may establish a safe residue level or require the development of a practical analytical method. This decision would be reached by assessing toxicity data, among other information. Similarly, FDA may take additional actions if the agency finds that an extralabel use ''may present a risk'' or ''presents a risk.'' The effect of this procedure would be to establish FDA's ''priority list,'' as requested in the comment. Accordingly, the agency believes that it is unnecessary to revise the regulations.

(14) Comments from several organizations and individuals stated strong concern about the implications of extralabel use for the development and transfer of antimicrobial resistance. In general, the comments asserted that extralabel use in food animals can increase risk of drug resistance to human pathogens because studies show that antimicrobial resistance can be transmitted to humans through consumption of animal products and through contact with livestock; extralabel uses of drugs in food and water (''environmental uses'') should be prohibited; extralabel use of fluoroquinolines and glycopeptides (such as vancomycin) should be prohibited; and antimicrobials approved only for use in humans should not be permitted for extralabel use in food animals. One comment also suggested prohibiting herd or flock treatment, when only a few animals exhibit symptoms.

Specifically, the Centers for Disease Control and Prevention (CDC) stated that the proposed rule does not provide adequate public health safeguards to prevent the emergence of antimicrobial resistance to agents that are important in human medicine. CDC stated that the use of antimicrobial agents in animals presents a risk to the public health as defined in the proposed rule, and noted that the proposed rule does not address the hazard caused by use of antimicrobials at low doses and for prolonged periods. CDC proposed that the extralabel use of antimicrobials be based on the results of culture and sensitivity testing, and that more stringent criteria should be applied to the extralabel use of antimicrobial drugs that are approved only for human use including approval for such use only on a compassionate basis. CDC also commended CVM for its commitment to safeguards for the prevention of increased antimicrobial resistance including CVM's establishment and continued sponsorship of the collaborative FDA, CDC, and U.S. Department of Agriculture's (USDA's) National Antimicrobial Resistance Monitoring System.

The Center for Science in the Public Interest (CSPI) stated that CVM has acknowledged that bacteria resistant to fluoroquinolones could emerge even in therapeutic uses of the drugs, that cross-resistance occurs in the drugs, and that extralabel use of fluoroquinolones will be restricted. CSPI also recommended that subtherapeutic extralabel use be prohibited in aquaculture. The current chair of FDA's Anti-Infective Drugs Advisory Committee and of the Antimicrobial Use and Clinical Trials Committee for Infectious Disease Society of America commented that recent presentations have suggested that less drug usage can result in a reduction of resistance. That comment, and several others, referred to general recommendations that have been made to the medical profession for prudent use of antimicrobials to reduce resistance.

The agency has spent many years studying the effect of antimicrobial drug use in animals on the selection of resistant bacteria and acknowledges the concerns expressed for the public health. The agency believes that several factors will provide the basis to adequately safeguard the public health: (1) Responsible therapeutic drug use by veterinarians, as described in this regulation; (2) provisions for adequate recordkeeping, including the requirement for specifying dose and duration of treatment; and (3) resistance monitoring efforts. FDA, CDC, and USDA have implemented a national surveillance program to monitor changes in antimicrobial susceptibilities of zoonotic pathogens from human and animal clinical specimens, from healthy farm animals, and from carcasses of food-producing animals at slaughter plants. This has been done in response to recommendations from a 1994 joint FDA advisory committee meeting regarding fluoroquinolones as well as a 1995 American Society for Microbiology Task Force on Antibiotic Resistance. The monitoring system will provide descriptive data on the extent and temporal trends of antimicrobial susceptibility in *Salmonella* from the human and animal populations. The goals are to use the information in a timely way to: (1) Guide veterinarians

and physicians; (2) prolong the lifespan of drugs that are approved; (3) facilitate the identification of resistance in either population as they arise; and (4) identify areas for more detailed investigation by the appropriate group. Moreover, the monitoring system will provide direction to initiate studies designed to answer some of the more vexing scientific questions regarding the resistance issue. The early identification of emerging resistance will allow agencies to focus educational efforts in the human and veterinary medical communities on the appropriate use of antimicrobial agents.

The agency believes that the selection of resistant human pathogens could be a basis for restricting extralabel drug use provided that these organisms can be shown to present a risk to the public health. The agency will allow extralabel use of drugs administered in drinking water only for therapeutic purposes, and information on resistance will be evaluated in relation to individual drugs and classes of drugs that might be administered by this means. Subtherapeutic use of drugs in animals is typically accomplished by adding drugs to feed at a low dose and over a long-term period. Such uses are ordinarily for nontherapeutic or production purposes. As explained elsewhere extralabel use of drugs in feeds and for production purposes are not allowed under the AMDUCA. Therefore, this should not be a factor in any resistance issues arising from extralabel drug use.

The agency has decided to initiate the process specified by the AMDUCA to prohibit extralabel use of approved fluroquinolones and glyecopeptides, for animal or human use, in food producing animals. An order to this effect will be published in the Federal Register, in the near future. The agency does not have information that meets the statutory requirement (that such extralabel use presents a risk to the public health) for across-the-board prohibition of the extralabel use of antimicrobial drugs that are approved only for use in humans. The agency has not determined what, if any, authority it has to require sensitivity testing but the agency believes that such testing is part of the responsible practice of veterinary medicine. Finally, as to treatments of groups of animals when only a few are sick, the agency believes that this is not likely to occur because of cost considerations.

(15) One comment suggested that the agency needs to expand the scope of the regulations to include environmental concerns, and animal health and well-being, as well as human health. The agency agrees that environmental and animal well-being are included in the term ''public health,'' and intends to interpret the term broadly in making determinations under this regulation. Of course, consistent with the language of the AMDUCA and the underlying purposes of the act, the major public health consideration is human health.

(16) One comment requested that extralabel drug use criteria and precautions address environmental safety questions. The agency believes that veterinarians should take environmental impacts into account when they make an extralabel use of an animal drug. They are expected to comply with any applicable Federal or local requirements, and to report environmental problems to CVM through the ADE reporting system.

(17) One comment suggested that the regulations be modified to suggest that good management practice, preventative health management plans, and quality assurance programs be used to minimize the need for extralabel (and routine) drug use in livestock systems. The agency agrees that these are important steps in minimizing risk to the public associated with extralabel drug use in food animals. However, the agency does not believe the regulations need to be modified because these measures are part of normal veterinary and animal management practices.

3. Comments on Specific Sections

a. Scope (§ 530.1)

(18) One comment, apparently assuming that the regulations apply only to OTC drugs and expressing concern about illegal OTC sale of prescription drugs directly to farmers, suggested that the regulations should apply to veterinary prescription drugs. The agency confirms that the regulations apply to all approved drugs, whether prescription or OTC. OTC sale of prescription drugs is illegal under the act, and that status is not changed in any way by the enactment of the AMDUCA or the publication of this regulation.

b. Purpose (§ 530.2)

(19) One comment suggested that the proposed regulation's stated purpose did not adequately recognize the importance of minimizing animal pain and suffering in permitting extra-label use. The agency considers the clause ''when the health of animals is threatened,'' in § 530.2, to include the concept of minimizing animal pain and suffering.

c. Definitions (§ 530.3)

(20) One comment stated that the regulations do not define the term ''food producing animal,'' and asked if this term would include species that are used for food in other countries but not in the United States. As an example the comments cited horses that are to be exported from the United States for food. Another comment suggested that the definition of food-producing animals should not include food-producing animals that are in early life stages. Another comment stated that dairy heifer calves should be considered nonfood, since they will not be used to produce food (milk) for 2 years. The agency has not defined the term ''food-producing animal'' in the regulation because its meaning (i.e., those animals that are intended to provide food for human consumption) is the same for purposes of this rule as it is for any other purpose under the act. Thus, horses may be food or nonfood animals, depending on their intended use. If they are intended to be exported for human consumption, they would be considered to be food-producing animals. Further, the agency does not ordinarily distinguish food-producing from nonfood-producing animals based on life-stages or production classes.

(21) One comment suggested that the term ''drug sponsor'' be defined. The terms ''drug sponsor'' and ''sponsor'' are used to refer to the person who holds the approved NADA. We have not provided a definition of ''drug sponsor'' or ''sponsor'' in § 530.3, because these terms are not used in the regulations in new part 530.

(22) A number of comments requested clarification of the phrase ''adverse event'' as used in the definitions of risk to the public health (§ 530.3(c), (d), and (e)). One comment suggested defining the term in relation to the preservation of animal health, while recognizing any science-based risk to the public health. One comment suggested that the term ''adverse event'' be replaced by ''adverse public health event.'' Another comment suggested that the interpretation of ''adverse event'' was too narrow when confined to those events currently considered reportable adverse drug reactions required by 21 CFR 510.300 and 510.301. The agency's use of the phrase ''adverse events'' in these sections is related to the public health. As explained above, the agency intends to interpret the term ''public health'' to include animal and environmental safety in addition to human health. The agency did not intend for the term ''adverse event'' to be interpreted as related only to animal ''adverse drug reactions.'' In fact, the primary focus will be on human health.

(23) One comment concluded that the description of the agency's means of determining risk as defined in

§ 530.3(c), (d), and (e) suggested that one agency's employee would make this decision or recommendation. The comment suggested that the agency involve FDA's Veterinary Medicine Advisory Committee (VMAC) in making risk determinations. Several comments proposed that the agency have defined and open processes for determining whether the statutory criteria are met. Many comments requested that the definition of these terms incorporate the concept that the determinations would be based on documented or reliable scientific information. Several comments suggested that the thresholds be more rigorous, e.g., ''may be likely to cause,'' ''may cause,'' and ''has a direct causative link'' to an adverse public health consequence, respectively, for § 530.3(c), (d), and (e). Several comments insisted that FDA was applying a double standard, i.e., by holding veterinarians to strict scientific requirements (see § 530.20) while requiring only minimal scientific information in making the threshold findings.

It was not the intention of the agency to suggest that decisions would be made by an FDA employee. Any decision regarding the risk to the public health would be an agency decision made by the appropriate agency official acting under the authority of Secretary as delegated or redelegated under the act.

FDA will consider seeking advice from VMAC, as appropriate, on issues relating to the implementation of the AMDUCA. As explained elsewhere in the preamble, and as reflected in the regulations, the agency will use defined processes, provide opportunity for public comment, and provide for public information on its risk determinations. FDA believes that the risk determinations, especially the determination that leads to prohibition of a particular extralabel use, typically will involve documented scientific information. However, the agency believes that it is not limited to making risk determinations based solely on documented scientific information, but may use other suitable information as appropriate. Finally, the agency believes that its interpretations of the statutory criteria in § 530.3(c), (d), and (e) are consistent with the plain meaning of the words, past agency interpretations of similar words, and the overall congressional purpose, and therefore has not adopted the suggested changes to § 530.3(c), (d), and (e).

With regard to the ''double standard'' comment, the agency believes that both the requirements for threshold determinations and those for veterinarian use of extralabel drugs in food animals are consistent with the AMDUCA and the agency's responsibility to protect the public health.

(24) Some comments sought clarification of the term ''safe level.'' For example, one comment asked for clarification of the third sentence in proposed § 530.3(g), which distinguishes ''safe level'' from other concepts such as ''safe concentration'' and ''tolerance.'' The latter two terms are applied to approved drugs. A ''safe level'' within the meaning of the AMDUCA is one that presents essentially no human food safety concern.

(25) Several comments suggested adding the word ''edible'' before ''animal tissues'' in the first sentence of § 530.3(g). The agency agrees, and it has made the change.

(26) Many comments suggested that the definition provided in proposed § 530.3(h) for ''veterinarian'' and ''veterinary-client-patient relationship'' was adequate for individual practitioners, but needed to be amended to provide for group practices, in which several veterinarians may provide for the veterinary needs of an individual client or patient. The agency agrees with this comment, and it will interpret the regulation accordingly.

(27) Comments stated that graduation from an accredited institution should not be a prerequisite for a veterinarian to make extralabel uses, as stated in the preamble. The agency agrees, but no change is required in the regulation because the regulation did not state an accreditation requirement.

(28) One comment suggested that the veterinarian is responsible for determining the appropriate timeliness of visits, a concept that is included in the definition of veterinary-client-patient relationship in § 530.3(h). The agency agrees that timeliness is ordinarily determined by generally accepted standards of veterinary medicine practice, and it has not specified a timeliness standard in the regulation.

d. Advertising and promotion (§ 530.4)

(29) Several comments suggested that the section of the regulation prohibiting advertising and promotion of extralabel uses, § 530.4, be modified to permit the mere listing of human labeled drug products in price sheets and catalogs that are distributed to veterinarians. The agency agrees that this practice is acceptable because we do not consider mere listing of human labeled drug products in price sheets and catalogs distributed to veterinarians to be advertising and promotion of extralabel use. However, the agency does not believe that it is necessary to modify the regulation as suggested.

e. Records (§ 530.5)

(30) Approximately two dozen organizations and individuals expressed objection to one or more provisions of the section related to recordkeeping and access to records. Only one comment favored the provision. The comment suggested a uniform Federal requirement and additional records besides those specified in the regulations, including dates of administration and use of a form specified by FDA. Generally, the comments characterized the requirement as confusing, excessive, and burdensome. The comments stated that notwithstanding FDA's preamble statement to the contrary, States do not uniformly require the records listed in the proposed regulation; in fact, the comments asserted, some States have no recordkeeping requirements at all. Several comments said, in contrast, that veterinarians keep and are encouraged to keep adequate records in accordance with generally accepted standards of practice and AVMA Guidelines for Prescription Drugs. The comments also stated that FDA should not mandate recordkeeping; the agency should specify the records that are directly related to extralabel use and access should be limited to those records; inspection should be preceded by procedural restrictions (e.g., an open process for determining when the statutory threshold of ''may present a risk to the public health'' is met, along with evidence that a particular veterinarian is engaged in the extralabel use in question before records are requested); and client confidentiality should be respected under State confidentiality laws. In addition, comments questioned FDA's use of the records as an enforcement tool.

FDA acknowledges that the comments are correct in their assertion that not all States require the records listed in the proposed regulation. The agency wishes to clarify the main purpose of records inspection, that is, to ascertain the extent and nature of an extralabel use that the agency has determined may present a risk to the public health information gathered in the inspection may lead to prohibition of the particular extralabel use. The main purpose of the inspection, therefore, is not enforcement of these regulations as apparently understood by the comments. The agency believes that most veterinarians keep records that would be adequate for FDA's information-gathering purposes, whether by State law or standard veterinary practice. Such records would

include identification of the drug, condition treated, species, dosage, duration, number of animals treated, and withdrawal time. However, the agency has concluded that it should specify minimal recordkeeping requirements in order to accomplish the purposes of the act. Congress has clearly provided authority for such requirement.

The agency emphasizes that the requirement to keep the records applies only to extralabel uses, and the records access provisions apply only after the agency has determined that a particular use may present a risk to the public health. As discussed in response to the next comment, the agency will give public notice of such determinations.

The agency will consider a system using notification and appointments when it develops its procedures for records inspections. The agency's personnel who collect and review records will be instructed to protect client confidentiality. As suggested by one comment, veterinarians will be allowed to copy or reformulate records to provide inspectors with only information required by the regulations.

The regulation has been modified in accordance with this discussion.

(31) A number of comments suggested that FDA give public notification of a ''determination'' that an extralabel use in animals ''may present a risk to the public health,'' and that such notice be provided prior to initiating record inspections related to the particular use. The agency will provide informal public notification (e.g., articles or notices in the *CVM Update* or on the *CVM Homepage* (http://www.cvm.fda.gov) on the Internet World Wide Web) when it has determined that a particular use ''may present a risk to the public health.'' It is likely that in most cases, this informal public notification will be prior to FDA initiating inspections of veterinarian records related to a particular use.

f. Feed use drugs (§ 530.11(b))

(32) Several comments addressed the provision of the AMDUCA (Section 4(a)) and the regulation, § 530.11(b), that prohibits extralabel use of a drug ''in or on an animal feed.'' The American Feed Industry Association commented that the proposed regulation is correct, that it would clearly prohibit—without limitation or exception—the extralabel use of drugs administered in or on feed. The National Grain and Feed Association strongly supported the prohibition. Comments from organizations representing aquaculture, pheasant growers, and wildlife interests requested exceptions for their species. These groups contended, for example, that extralabel uses should be permitted of medicated feeds that are properly formulated and labeled in accordance with regulations. Several groups suggested that there should be exceptions for use of feed to administer drugs to individual animals.

FDA believes that the act as amended by the AMDUCA does not allow extralabel use of a feed use drug (Type A article) in medicated feed or an extralabel use of the medicated feed. As stated earlier, the agency anticipates examining extralabel use which is outside the scope of AMDUCA in the context of determining regulatory priorities. In this regard, the agency notes that in the past, as a matter of enforcement discretion, the agency generally has not objected to mixing a drug with an individual animal's feed, and does not expect to change its regulatory priorities in this regard.

g. Labeling (§ 530.12)

(33) One comment sought clarification of the agency's intention, as stated in the preamble discussion of § 530.12, to allow labeling of case quantities of drugs. The agency believes case-labeling is appropriate when large numbers of animals need to be treated in an extralabel manner for a short period (e.g., feedlot use).

(34) Several comments objected to the provision in § 530.12(c), which requires that labeling identify ''the animal'' in which the drug is to be used. The comments proposed that the regulation allow for identification of a group of animals, i.e., a herd, where appropriate. Suggestions included requiring pen number, pasture, lot number, or other defining characteristic. The agency agrees, and it has modified the regulation accordingly.

(35) One comment suggested that the labeling requirements in § 530.12(a) be modified to allow the labeling to display either the name and address of the veterinarian, or the name of the veterinarian and the name and address of the dispensing pharmacy. The comment stated that most State pharmacy acts require the name and address of the pharmacy to appear on the labeling, while the pharmacy keeps the address of the veterinarian in its files. The comment stated that in many cases, the label is too small to include both addresses. The agency agrees, and it has modified the regulation accordingly.

h. Compounding (§ 530.13)

(36) One comment suggested that rules implementing the AMDUCA should not include regulations regarding compounding. The comment suggested that the regulation merely state that the AMDUCA does not authorize compounding from bulk drugs or unapproved drugs, and refer to separate guidance on compounding. Compounding for use in food animals raises unique concerns with respect to drug residues. The detailed regulations for extralabel use of finished products, while generally applicable to compounding, do not fully address these unique concerns.

Therefore, the agency believes that regulations specific to compounding allowed as a result of the AMDUCA are necessary.

(37) In contrast, several comments requested that CPG 608.400, ''Compounding of Drugs for use in Animals,'' be issued under notice and comment procedures so that the entire content of CPG would be made part of the regulations. CPG's, which set out FDA's regulatory priorities are intended to provide information and guidance. Because such policies are discretionary, they are not binding either on the agency or the public and can be changed from time to time. Notice and comment rulemaking and resulting regulations, on the other hand, establish policies which have the force and effect of law. Therefore, the use of such procedures is not appropriate for CPG's. The agency notes that it followed its usual practice and published a Federal Register notice that announced the availability of the CPG (61 FR 34849, July 3, 1996) which included the entire text of the CPG and specifically provided opportunity for comment.

(38) One comment suggested that all cutaneously administered compounds (e.g., foot bath preparations) be exempted from the compounding restrictions. The agency believes that the comment may refer to the use for compounding of drug products that have not been approved. Because the AMDUCA applies only to approved drugs, the agency does not have authority in its implementing regulations to exempt extralabel use, including compounding, of unapproved drugs. If the comment intended to address compounding from approved drugs for a specific use (i.e., cutaneous administration), such compounding must be consistent with these final rules. As stated above, further detailed guidance for compounding is provided in its compounding CPG.

(39) One comment recommended that § 530.13 be modified to be consistent with § 530.20 to state that, if available, an approved animal drug must be utilized for compounding before using a human drug for compounding. The agency agrees, and it has made the appropriate modification of § 530.13. To be consistent with § 530.30, however,

the restriction will apply only to drugs compounded for use in food animals.

(40) One comment suggested that the recently issued CPG on compounding contradicts the second sentence in § 530.13(a), and that this sentence should be deleted. The sentence states that the regulations shall not be construed as permitting compounding from bulk drugs. On the other hand, the CPG states that the agency will generally exercise enforcement discretion in very limited circumstances with regard to compounding from bulk substances. The comment suggests a misunderstanding of the difference in scope and purpose between the AMDUCA and its implementing regulations, and the compounding CPG. The AMDUCA applies only to approved products, therefore, compounding from bulk drugs could not be permitted under the AMDUCA regulations. However, limited compounding from bulk substances may be subject to FDA's enforcement discretion as expressed in the CPG. Thus, the second sentence in § 530.13(a) is not in conflict with the CPG.

i. Conditions for extralabel use in food animals (§ 530.20)

(41) One comment suggested it would be appropriate to add language to § 530.20 to state that an animal owner administering an extralabel drug under a valid veterinary-client-patient relationship shall be responsible for maintaining animal identification and observing the established withdrawal periods. The agency agrees that the animal owner as well as the veterinarian has responsibility to assure that steps are taken to avoid the occurrence of unsafe drug residues. However, the agency does not believe that the regulations need to be amended to state the animal owner's responsibility because the responsibility is emphasized elsewhere, e.g., in CPG 615.200, Proper Drug Use and Residue Avoidance by Non-Veterinarians.

(42) Comments suggested that § 530.20(a) should be revised by deleting the words ''and human drugs'' at the end of the sentence. The comments asserted that the deletion would provide for compliance with the specific language in the AMDUCA, and would conform to the language contained in the CPG 7125.35. The agency disagrees with the suggestion, which would mean that safeguards that would be applied to extralabel use of animal drugs in food animals would not be applied when human drugs are used in food animals. The agency believes that Congress did not intend a lesser standard of protection for the public when human drugs are used in food animals, and that the AMDUCA provides the necessary authority to apply the standards to use of human drugs.

(43) Approximately two dozen organizations and individuals commented on the provisions in § 530.20(b) that would require veterinarians to: (1) Document the medical rationale for use of a human or nonfood animal drug in food animals, and (2) if there is no published scientific information on the public health implications, determine that the animal and its food products will not enter the human food supply. A large number of comments opposed these provisions. Comments stated that the provisions would essentially preclude extralabel use in food animals and exotic animals; that the provisions are inconsistent with standards elsewhere in the regulation (e.g., ''reasonable probability of risk''); and that there is no serious drug residue problem (related to extralabel use by veterinarians) to be solved. Specifically, the comments stated that: (1) The requirement for published scientific information would exclude extralabel use of some 60 therapeutic agents, now permitted by the CPG's; (2) the regulation's requirement for published scientific information is unclear; (3) the regulation places unreasonable responsibility on the veterinarian, and it may result in substandard care for food animals; and (4) the regulation contradicts the agency's past position that there are no nonfood food animals. Most of those commenting suggested deleting these provisions from the regulation. Several suggested that the scientific information should be specified to include pharmacokinetic and toxicological information and data from sources such as the Food Animal Residue Avoidance Database, sponsors, etc. in addition to peer reviewed journals. One comment suggested that the restriction on food animal use should apply only if there is scientific information that identifies a problem. Several suggested that the regulation should require a 6 months withdrawal period, instead of permanent prohibition from food use.

The agency is primarily concerned that the veterinarian have a scientific basis for an extralabel use, and is especially concerned where the veterinarian is using in a food animal a drug that is not approved for food animal use. The agency notes that the human drug CPG contains several restrictions in addition to those contained in the animal drug CPG, and that the human drug CPG states that use of human drugs in food animals is expected to be rare. Thus, the agency believes that there is not only a rational basis but also precedential policy that applies to the provisions of § 530.20(b).

The agency believes that the rationale for restricting use of human drugs in food animals applies as well to use in food animals of drugs approved only for nonfood animals. Such drugs often contain the same active ingredients as approved human drugs. Thus, the agency expects the veterinarian to have scientific information on which to base such use, but has deleted the requirement that the data be ''published.'' Essentially, the agency expects that the veterinarian will have a scientific basis for using in food animals a drug that is not approved in any food animal, but that scientific information could be derived from a variety of sources, and that the veterinarian's rationale will be recorded in appropriate records. Accordingly, the agency has retained in § 530.20(b)(1) of the final rule the requirement for a medical rationale (i.e., a rational basis for using the drug), but has removed from the regulation the proposed requirement for documentation.

With respect to the veterinarian's responsibility for keeping animals out of the food supply, the agency believes that this obligation can be met by informing the client of the client's responsibility not to allow an animal to enter the human food supply. The agency has revised the regulation accordingly.

With the changes described above, FDA believes that the AMDUCA regulation will not preclude the use of approved drugs that previously have been available for extralabel use. Nor does the regulation contradict the agency's general policy that certain classes of animals are food animals regardless of circumstances.

(44) One comment suggested that the requirement in § 530.20(c) for a veterinarian to ''consider'' the extralabel drug be clarified to state that a veterinarian must utilize an animal drug, if one is available to treat the condition. The agency agrees and has revised the language accordingly. The agency has also deleted the requirement for documenting consideration of an approved animal drug (§ 530.20(c)). In these cases, however, a veterinarian will be expected to be able, upon request, to explain and support the use of a human drug or nonfood animal drug in food animals.

j. Prohibitions for food animals (§ 530.21)

(45) A few comments suggested that § 530.21(a), (a)(2), and (b) be modified by adding the term ''extralabel'' prior to the word ''use'' to clarify the prohibition

is for the ''extralabel use''' of a drug. The agency agrees, and it has made the appropriate changes.

(46) One comment asked who would be responsible for conducting and paying for the development of analytical methodology for drug residue detection. The comment suggested that this research could be done by USDA and a public master file established as is presently done for minor species claims. The AMDUCA does not specify who has the responsibility for method development. Methods may be developed under a variety of scenarios. The drug sponsor, FDA, USDA, States, or a consortium of interested parties are all possible participants. The agency is willing to work in partnership with the private and public sectors to ensure that the methods are developed when needed.

(47) A number of comments suggested that the agency exceeded its authority when it proposed to allow the prohibition of extralabel-label drug use of a class of drugs. The agency disagrees. Where a class of drugs has one or more common elements that cause a particular risk, FDA believes the statute authorizes prohibition of the entire class of drugs. Examples of situations where the agency has prohibited extralabel use of a class of drugs are the sulfonamide and nitroimidazole drug classes, which are excluded from extralabel use in the animal drug CPG. One comment suggested that as safer new analogs of drugs are being developed it is inappropriate to prohibit a class of compounds. The agency agrees. If safer analogs are developed for a drug that is in a prohibited class of drugs, the agency may amend the prohibited list as appropriate.

k. Safe levels and analytical methods (§ 530.22)

(48) One comment expressed concern over the perception that the agency has in the regulations developed two standards of safety concerning human food safety in food animals, i.e., safe levels and tolerances. The comment asserted that establishment of a safe level without complete toxicology data implies that FDA is willing to accept a lower standard of safety for extralabel use of drugs in food animals. The comment recommended that safe levels should be established based on drug metabolism and toxicology data. It also stated the criteria used by FDA to establish human food safety for extralabel use should be made public. The agency notes that the AMDUCA clearly directs the agency to permit extralabel uses that have not gone through the rigors of testing provided by the NADA process. The law directs the agency to develop regulations that provide veterinarians the latitude to practice veterinary medicine, while protecting public health. As specific criteria for establishing human food safety are developed, information relating to those criteria will be provided to the public.

The agency has also added the words ''safe concentration'' in addition to the word ''tolerance'' in §§ 530.11 and 530.22. This is because the term ''safe concentration'' is used in some instances to describe safe levels of approved products.

(49) Several comments questioned the appropriateness of setting a safe level on the basis of the lowest level that can be measured by a practical analytical method. The comments stated that this is not a sound scientific basis for protecting the public health. The agency notes that where a safe level cannot be established on the basis of toxicological and other scientific information, it may require the development of an analytical method having state-of-the-art residue detection capability. Such methods can be used in an empirical strategy to minimize risk, i.e., to control or limit public exposure to residues of animal drugs for which toxicological safety information is lacking. However, the agency will not establish a safe level on this basis unless it has concluded that the lowest level of measurement sufficiently protects the public health. All relevant scientific information will be reviewed before doing so.

l. Safe levels (§ 530.23)

(50) A number of comments suggested that the agency modify § 530.23(a)(1) to include the basis for the agency's finding in the notice that establishes a safe level, and that CVM should invite the public to comment before that safe level becomes final. One comment suggested that the procedure described in § 530.22 be followed. The agency agrees with the suggestion as to the basis for the finding, and it has amended § 530.23(a), accordingly. However, the agency believes that it is not necessary to have additional procedural provisions because the regulation provides an opportunity for public comment after the safe level is established. If comments received after the safe level is established bring new information to light, the agency may revoke or modify the safe level as appropriate.

m. Analytical methods (§ 530.24)

(51) On its own initiative, the agency has modified proposed § 530.24 to include a specific process for issuance of an order announcing a specific analytical method or methods for the quantification of extralabel use drug residues above the safe levels established under § 530.22 for extralabel use of an approved human drug or an approved animal drug. This process is the same as that in § 530.23 for setting a safe level. Under the modified procedure, the agency will publish in the Federal Register a notice of the order, including the name of the specific analytical method or methods and the drug or drugs for which the method is applicable.

n. Prohibited uses (§ 530.25)

(52) One comment requested that § 530.25(h) be reworded to require FDA to publish a safe level, whenever possible, rather than prohibit an extralabel use. The regulations do not require publication of a safe level first because the statute provides the agency with flexibility through use of the word ''may.'' It is FDA's intention, however, to consider establishing a safe level prior to prohibiting a drug's extralabel use unless the agency finds it necessary to protect public health to prohibit the extralabel use of a drug without first establishing a safe level.

The agency has also inserted a provision in § 530.25(b) that an order of prohibition may be issued if the agency determines that an analytical method cannot be established. This provision was included in § 530.21 of the proposed rule but left out of corresponding § 530.25. This would apply in situations in which the agency has determined, based on information available to it, that development of a practical method related to the particular extralabel use is not technically feasible. This determination would be subject to comment during the comment period on the prohibition order. This allows the agency to protect the public health by eliminating the time that would elapse if the agency were to follow the procedure specified in § 530.22 for requiring development of an analytical method, in cases where the agency believes that an acceptable method cannot be developed.

The agency understands that Congress expected the agency to prohibit those extralabel uses that were prohibited under the animal drug CPG, without following the prohibition procedures prescribed by the AMDUCA. For example, Senator Heflin stated, ''This bill authorizes FDA to incorporate in its initial regulations the list of prohibited extralabel uses of drugs specifically listed by name in the current compliance policy guide. Any new restrictions would have to go through the procedures established in this law prior to being prohibited.'' (140 Congressional Record S14071 (daily ed.

October 4, 1994).) Accordingly, § 530.41 in the final regulations includes a list prohibiting extralabel uses as specified in the CPG.

o. Nonfood animal drugs (§ 530.30)

(53) A number of comments pointed out an inconsistency between the preamble statement (61 FR 25106 at 25111) and the regulation (§ 530.30(a)) regarding extralabel uses in nonfood animals of human drugs where an approved NAD exists. The agency notes that the regulation is correct, but the preamble incorrectly stated that use of human drug is not permitted if an approved NAD for such use exists, i.e., the words ''or human drug'' were inadvertently added to the preamble.

(54) Many comments suggested that a new § 530.30(c) be added to read ''Extralabel use of a drug approved for human use is permitted in nonfood-producing animals even if there is an identical approved new animal drug.'' Although the agency agrees that this statement is correct, the agency does not believe that the statement is necessary in the regulation because of the broad language in § 530.30(a).

## III. Effective Dates

Under section 2(d) of the AMDUCA, the amendments to the act permitting the extralabel use of certain approved animal drugs and approved human drugs for animals become effective upon the adoption of final rules implementing the amendments. This final rule becomes effective December 9, 1996.

## IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354) (5 U.S.C. 601 *et seq*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order.

Most of the requirements in this final rule have already been implemented by regulated industry, veterinarians, and pharmacists in response to the existing CPG's relating to extralabel drug use in animals and the passage of the AMDUCA, FDA guidance, and industry trade associations' recommendations, as well as the requirements of State veterinary practice acts and as customary elements of good veterinary medical practice.

The actual cost to industry and the public associated with this final rule will be quite minimal. The AMDUCA was enacted to legalize extralabel use of certain approved new human and animal drugs in veterinary medicine, and to provide FDA with specific regulatory tools to assure food safety. The scant legislative history of the AMDUCA includes evidence that the AMDUCA was intended to codify policies similar to those in FDA's CPG's.

FDA is likely to require the establishment of a safe drug residue level for one to two drugs per year after the final rule becomes effective. An analytical methodology for drug residue detection may be required for each of these drugs. The sponsor may be willing to provide the methodology in some cases, while in others, FDA, the sponsor, and, perhaps, a third party, may negotiate a cooperative arrangement for methodology development. In the proposal, FDA estimated the cost for development of methodologies to range from about $90,000 for a drug for which there are few problems in developing a procedure, upward to about $350,000 for a drug which presents significant problems in methodology development, with an additional $100,000 required for a drug metabolism study. One comment to the proposal concerned the inclusion of the costs of methods validation in the above costs. FDA did not include these costs, which range from about $20,000 to $40,000 for each trial, in its proposal. Adding the midpoint of this range to the previous estimate of $170,000 for a drug presenting an intermediate level of difficulty, FDA estimates methodology development costs for the final rule to be about $200,000 for each of these drugs. The agency estimated in its proposal that the average year would see the development of two of these intermediate level drug methodologies, with one of those drugs requiring a metabolism study. FDA did not receive any comments about this estimate and retains it for use in the final rule. Thus, total cost impacts for development of two methodologies and one metabolism study are estimated at $500,000 per year. The agency believes that the final rule does not impose any significant new extralabel drug use recordkeeping requirements for sponsors or veterinarians that are not currently required by other sections of the act or under State veterinary practice acts, or that are not kept by veterinarians as part of customary veterinary practice.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The final rule, for the most part, implements existing FDA policy, and most of the requirements in this final rule have already been implemented by regulated industry, veterinarians, and pharmacists in response to the existing CPG's relating to extralabel drug use in animals and the passage of the AMDUCA, FDA guidance, and industry trade associations' recommendations. Further, because FDA estimates that only two entities will incur economic impacts annually, the agency certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

## VI. Federalism

FDA has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

## VII. Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 (Pub. L. 104–4) (2 U.S.C. 1532) requires an agency to prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in expenditures by State, local, and tribal governments or the private sector of $100 million or more in any 1 year. As discussed in the preamble, the final rule essentially reflects current agency policies with respect to extralabel drug use in animals and imposes minimal new Federal requirements. Because this rule will not impose a cost of $100 million or more on any governmental entity or the private sector, no budgetary impact statement is required.

## VIII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520). Therefore, in accordance with 5 CFR 1320, the title, description, and the description of respondents of the information collection requirements are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Title:* Extralabel Drug Use in Animals—Final Rule

*Description:* This final rule provides that FDA may require the development of an acceptable analytical method for the quantification of residues above an established safe level. FDA estimates that it will likely establish safe levels for one to two drugs per year if the rule is finalized, and that an analytical methodology for drug residue detection will be required for each of these drugs. If no method is provided, the Secretary may prohibit the extralabel use. This requirement may be fulfilled by any interested person. FDA believes that the sponsor may be willing to provide the methodology in some cases, while in others, FDA, the sponsor, and perhaps a third party may negotiate a cooperative arrangement for method development.

*Description of Respondents:* Persons, sponsors, States, or Federal Government.

ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 530.22(b) | 2 | 1 | 2 | 4,160 | 8,320 |

[1] There are no capital or operating or maintenance costs associated with this collection.

None of the 110 comments received had an impact on the Paperwork Reduction Act requirements. As a result, OMB has waived its option to review the paperwork at the final rule stage. Therefore, the information collection provisions in the final rule are approved under OMB Control No. 0910–0325 and are effective upon publication of this document. OMB approval expires on July 31, 1999. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

IX. Congressional Review

This rule is not a major rule for purposes of 5 U.S.C. 801 *et seq.*, Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). Agency reports on this final rule have been submitted to Congress and the Comptroller General as required by 5 U.S.C. 801 *et seq.*

List of Subjects in 21 CFR Part 530

Administrative practice and procedures, Advertising, Animal drugs, Animal feeds, Drugs, Labeling, Prescription drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, Title 21 of the Code of Federal Regulations is amended to add a new part 530 to read as follows:

## PART 530—EXTRALABEL DRUG USE IN ANIMALS

### Subpart A—General Provisions

Sec.



Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 501, 502, 503, 505, 507, 512, 701, and 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 360b, 371, 379e).

### Subpart A—General Provisions

#### § 530.1 Scope.

This part applies to the extralabel use in an animal of any approved new animal drug or approved new human drug by or on the lawful order of a licensed veterinarian within the context of a valid veterinary-client-patient relationship.

#### § 530.2 Purpose.

The purpose of this part is to establish conditions for extralabel use or intended extralabel use in animals by or on the lawful order of licensed veterinarians of Food and Drug Administration approved new animal drugs and approved new human drugs. Such use is limited to treatment modalities when the health of an animal is threatened or suffering or death may result from failure to treat. This section implements the Animal Medicinal Drug Use Clarification Act of 1994 (the AMDUCA) (Pub. L. 103–396).

#### § 530.3 Definitions.

(a) *Extralabel use* means actual use or intended use of a drug in an animal in a manner that is not in accordance with the approved labeling. This includes, but is not limited to, use in species not listed in the labeling, use for indications (disease or other conditions) not listed in the labeling, use at dosage levels, frequencies, or routes of administration other than those stated in the labeling, and deviation from the labeled withdrawal time based on these different uses.

(b) *FDA* means the U.S. Food and Drug Administration.

(c) The phrase *a reasonable probability that a drug's use may present a risk to the public health* means that FDA has reason to believe that use of a drug may be likely to cause a potential adverse event.

(d) The phrase *use of a drug may present a risk to the public health* means that FDA has information that indicates that use of a drug may cause an adverse event.

(e) The phrase *use of a drug presents a risk to the public health* means that FDA has evidence that demonstrates that the use of a drug has caused or likely will cause an adverse event.

(f) A *residue* means any compound present in edible tissues that results from the use of a drug, and includes the drug, its metabolites, and any other substance formed in or on food because of the drug's use.

(g) A *safe level* is a conservative estimate of a drug residue level in edible animal tissue derived from food safety data or other scientific information. Concentrations of residues in tissue below the safe level will not raise human food safety concerns. A safe level is not a safe concentration or a tolerance and does not indicate that an approval exists for the drug in that species or category of animal from which the food is derived.

(h) *Veterinarian* means a person licensed by a State or Territory to practice veterinary medicine.

(i) A *valid veterinarian-client-patient relationship* is one in which:

(1) A veterinarian has assumed the responsibility for making medical judgments regarding the health of (an) animal(s) and the need for medical treatment, and the client (the owner of the animal or animals or other caretaker) has agreed to follow the instructions of the veterinarian;

(2) There is sufficient knowledge of the animal(s) by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s); and

(3) The practicing veterinarian is readily available for followup in case of adverse reactions or failure of the regimen of therapy. Such a relationship can exist only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept.

### § 530.4 Advertising and promotion.

Nothing in this part shall be construed as permitting the advertising or promotion of extralabel uses in animals of approved new animal drugs or approved human drugs.

### § 530.5 Veterinary records.

(a) As a condition of extralabel use permitted under this part, to permit FDA to ascertain any extralabel use or intended extralabel use of drugs that the agency has determined may present a risk to the public health, veterinarians shall maintain the following records of extralabel uses. Such records shall be legible, documented in an accurate and timely manner, and be readily accessible to permit prompt retrieval of information. Such records shall be adequate to substantiate the identification of the animals and shall be maintained either as individual records or, in food animal practices, on a group, herd, flock, or per-client basis. Records shall be adequate to provide the following information:

(1) The established name of the drug and its active ingredient, or if formulated from more than one ingredient, the established name of each ingredient;

(2) The condition treated;

(3) The species of the treated animal(s);

(4) The dosage administered;

(5) The duration of treatment;

(6) The numbers of animals treated; and

(7) The specified withdrawal, withholding, or discard time(s), if applicable, for meat, milk, eggs, or any food which might be derived from any food animals treated.

(b) A veterinarian shall keep all required records for 2 years or as otherwise required by Federal or State law, whichever is greater.

(c) Any person who is in charge, control, or custody of such records shall, upon request of a person designated by FDA, permit such person designated by FDA to, at all reasonable times, have access to, permit copying, and verify such records.

## Subpart B—Rules and Provisions for Extralabel Uses of Drugs in Animals

### § 530.10 Provision permitting extralabel use of animal drugs.

An approved new animal drug or human drug intended to be used for an extralabel purpose in an animal is not unsafe under section 512 of the act and is exempt from the labeling requirements of section 502(f) of the act if such use is:

(a) By or on the lawful written or oral order of a licensed veterinarian within the context of a valid veterinarian-client-patient relationship; and

(b) In compliance with this part.

### § 530.11 Limitations.

In addition to uses which do not comply with the provision set forth in § 530.10, the following specific extralabel uses are not permitted and result in the drug being deemed unsafe within the meaning of section 512 of the act:

(a) Extralabel use in an animal of an approved new animal drug or human drug by a lay person (except when under the supervision of a licensed veterinarian);

(b) Extralabel use of an approved new animal drug or human drug in or on an animal feed;

(c) Extralabel use resulting in any residue which may present a risk to the public health; and

(d) Extralabel use resulting in any residue above an established safe level, safe concentration or tolerance.

### § 530.12 Labeling.

Any human or animal drug prescribed and dispensed for extralabel use by a veterinarian or dispensed by a pharmacist on the order of a veterinarian shall bear or be accompanied by labeling information adequate to assure the safe and proper use of the product. Such information shall include the following:

(a) The name and address of the prescribing veterinarian. If the drug is dispensed by a pharmacy on the order of a veterinarian, the labeling shall include the name of the prescribing veterinarian and the name and address of the dispensing pharmacy, and may include the address of the prescribing veterinarian;

(b) The established name of the drug or, if formulated from more than one active ingredient, the established name of each ingredient;

(c) Any directions for use specified by the veterinarian, including the class/species or identification of the animal or herd, flock, pen, lot, or other group of animals being treated, in which the drug is intended to be used; the dosage, frequency, and route of administration; and the duration of therapy;

(d) Any cautionary statements; and

(e) The veterinarian's specified withdrawal, withholding, or discard time for meat, milk, eggs, or any other food which might be derived from the treated animal or animals.

### § 530.13 Extralabel use from compounding of approved new animal and approved human drugs.

(a) This part applies to compounding of a product from approved animal or human drugs by a veterinarian or a pharmacist on the order of a veterinarian within the practice of

veterinary medicine. Nothing in this part shall be construed as permitting compounding from bulk drugs.

(b) Extralabel use from compounding of approved new animal or human drugs is permitted if:

(1) All relevant portions of this part have been complied with;

(2) There is no approved new animal or approved new human drug that, when used as labeled or in conformity with criteria established in this part, will, in the available dosage form and concentration, appropriately treat the condition diagnosed. Compounding from a human drug for use in food-producing animals will not be permitted if an approved animal drug can be used for the compounding;

(3) The compounding is performed by a licensed pharmacist or veterinarian within the scope of a professional practice;

(4) Adequate procedures and processes are followed that ensure the safety and effectiveness of the compounded product;

(5) The scale of the compounding operation is commensurate with the established need for compounded products (e.g., similar to that of comparable practices); and

(6) All relevant State laws relating to the compounding of drugs for use in animals are followed.

(c) Guidance on the subject of compounding may be found in guidance documents issued by FDA.

## Subpart C—Specific Provisions Relating to Extralabel Use of Animal and Human Drugs in Food-Producing Animals

### § 530.20 Conditions for permitted extralabel animal and human drug use in food-producing animals.

(a) The following conditions must be met for a permitted extralabel use in food-producing animals of approved new animal and human drugs:

(1) There is no approved new animal drug that is labeled for such use and that contains the same active ingredient which is in the required dosage form and concentration, except where a veterinarian finds, within the context of a valid veterinarian-client-patient relationship, that the approved new animal drug is clinically ineffective for its intended use.

(2) Prior to prescribing or dispensing an approved new animal or human drug for an extralabel use in food animals, the veterinarian must:

(i) Make a careful diagnosis and evaluation of the conditions for which the drug is to be used;

(ii) Establish a substantially extended withdrawal period prior to marketing of milk, meat, eggs, or other edible products supported by appropriate scientific information, if applicable;

(iii) Institute procedures to assure that the identity of the treated animal or animals is carefully maintained; and

(iv) Take appropriate measures to assure that assigned timeframes for withdrawal are met and no illegal drug residues occur in any food-producing animal subjected to extralabel treatment.

(b) The following additional conditions must be met for a permitted extralabel use of in food-producing animals an approved human drug, or of an animal drug approved only for use in animals not intended for human consumption:

(1) Such use must be accomplished in accordance with an appropriate medical rationale; and

(2) If scientific information on the human food safety aspect of the use of the drug in food-producing animals is not available, the veterinarian must take appropriate measures to assure that the animal and its food products will not enter the human food supply.

(c) Extralabel use of an approved human drug in a food-producing animal is not permitted under this part if an animal drug approved for use in food-producing animals can be used in an extralabel manner for the particular use.

### § 530.21 Prohibitions for food-producing animals.

(a) FDA may prohibit the extralabel use of an approved new animal or human drug or class of drugs in food-producing animals if FDA determines that:

(1) An acceptable analytical method needs to be established and such method has not been established or cannot be established; or

(2) The extralabel use of the drug or class of drugs presents a risk to the public health.

(b) A prohibition may be a general ban on the extralabel use of the drug or class of drugs or may be limited to a specific species, indication, dosage form, route of administration, or combination of factors.

### § 530.22 Safe levels and analytical methods for food-producing animals.

(a) FDA may establish a safe level for extralabel use of an approved human drug or an approved new animal drug when the agency finds that there is a reasonable probability that an extralabel use may present a risk to the public health. FDA may:

(1) Establish a finite safe level based on residue and metabolism information from available sources;

(2) Establish a safe level based on the lowest level that can be measured by a practical analytical method; or

(3) Establish a safe level based on other appropriate scientific, technical, or regulatory criteria.

(b) FDA may require the development of an acceptable analytical method for the quantification of residues above any safe level established under this part. If FDA requires the development of such an acceptable analytical method, the agency will publish notice of that requirement in the Federal Register.

(c) The extralabel use of an animal drug or human drug that results in residues exceeding a safe level established under this part is an unsafe use of such drug.

(d) If the agency establishes a safe level for a particular species or category of animals and a tolerance or safe concentration is later established through an approval for that particular species or category of animals, for that species or category of animals, the safe level is superseded by the tolerance or safe concentration for that species or category of animals.

### § 530.23 Procedure for setting and announcing safe levels.

(a) FDA may issue an order establishing a safe level for a residue of an extralabel use of an approved human drug or an approved animal drug. The agency will publish in the Federal Register a notice of the order. The notice will include:

(1) A statement setting forth the agency's finding that there is a reasonable probability that extralabel use in animals of the human drug or animal drug may present a risk to the public health;

(2) A statement of the basis for that finding; and

(3) A request for public comments.

(b) A current listing of those drugs for which a safe level for extralabel drug use in food-producing animals has been established, the specific safe levels, and the availability, if any, of a specific analytical method or methods for drug residue detection will be codified in § 530.40.

### § 530.24 Procedure for announcing analytical methods for drug residue quantification.

(a) FDA may issue an order announcing a specific analytical method or methods for the quantification of extralabel use drug residues above the safe levels established under § 530.22 for extralabel use of an approved human drug or an approved animal drug. The agency will publish in the Federal Register a notice of the order, including the name of the specific analytical method or methods and the drug or drugs for which the method is applicable.

(b) Copies of analytical methods for the quantification of extralabel use drug residues above the safe levels established under § 530.22 will be available upon request from the Communications and Education Branch (HFV–12), Division of Program Communication and Administrative Management, Center for Veterinary Medicine, 7500 Standish Pl., Rockville, MD 20855. When an analytical method for the detection of extralabel use drug residues above the safe levels established under § 530.22 is developed, and that method is acceptable to the agency, FDA will incorporate that method by reference.

**§ 530.25 Orders prohibiting extralabel uses for drugs in food-producing animals.**

(a) FDA may issue an order prohibiting extralabel use of an approved new animal or human drug in food-producing animals if the agency finds, after providing an opportunity for public comment, that:

(1) An acceptable analytical method required under § 530.22 has not been developed, submitted, and found to be acceptable by FDA or that such method cannot be established; or

(2) The extralabel use in animals presents a risk to the public health.

(b) After making a determination that the analytical method required under § 530.22 has not been developed and submitted, or that such method cannot be established, or that an extralabel use in animals of a particular human drug or animal drug presents a risk to the public health, FDA will publish in the Federal Register, with a 90-day delayed effective date, an order of prohibition for an extralabel use of a drug in food-producing animals. Such order shall state that an acceptable analytical method required under § 530.22 has not been developed, submitted, and found to be acceptable by FDA; that such method cannot be established; or that the extralabel use in animals presents a risk to the public health; and shall:

(1) Specify the nature and extent of the order of prohibition and the reasons for the prohibition;

(2) Request public comments; and

(3) Provide a period of not less than 60 days for comments.

(c) The order of prohibition will become effective 90 days after date of publication of the order unless FDA publishes a notice in the Federal Register prior to that date, that revokes the order of prohibition, modifies it, or extends the period of public comment.

(d) The agency may publish an order of prohibition with a shorter comment period and/or delayed effective date than specified in paragraph (b) of this section in exceptional circumstances (e.g., where there is immediate risk to the public health), provided that the order of prohibition states that the comment period and/or effective date have been abbreviated because there are exceptional circumstances, and the order of prohibition sets forth the agency's rationale for taking such action.

(e) If FDA publishes a notice in the Federal Register modifying an order of prohibition, the agency will specify in the modified order of prohibition the nature and extent of the modified prohibition, the reasons for it, and the agency's response to any comments on the original order of prohibition.

(f) A current listing of drugs prohibited for extralabel use in animals will be codified in § 530.41.

(g) After the submission of appropriate information (i.e., adequate data, an acceptable method, approval of a new animal drug application for the prohibited extralabel use, or information demonstrating that the prohibition was based on incorrect data), FDA may, by publication of an appropriate notice in the Federal Register, remove a drug from the list of human and animal drugs prohibited for extralabel use in animals, or may modify a prohibition.

(h) FDA may prohibit extralabel use of a drug in food-producing animals without establishing a safe level.

## Subpart D—Extralabel Use of Human and Animal Drugs in Animals Not Intended for Human Consumption

**§ 530.30 Extralabel drug use in nonfood animals.**

(a) Because extralabel use of animal and human drugs in nonfood-producing animals does not ordinarily pose a threat to the public health, extralabel use of animal and human drugs is permitted in nonfood-producing animal practice except when the public health is threatened. In addition, the provisions of § 530.20(a)(1) will apply to the use of an approved animal drug.

(b) If FDA determines that an extralabel drug use in animals not intended for human consumption presents a risk to the public health, the agency may publish in the Federal Register a notice prohibiting such use following the procedures in § 530.25. The prohibited extralabel drug use will be codified in § 530.41.

## Subpart E—Safe Levels for Extralabel Use of Drugs in Animals and Drugs Prohibited From Extralabel Use in Animals

**§ 530.40 Safe levels and availability of analytical methods.**

(a) In accordance with § 530.22, the following safe levels for extralabel use of an approved animal drug or human drug have been established: [Reserved]

(b) In accordance with § 530.22, the following analytical methods have been accepted by FDA: [Reserved]

**§ 530.41 Drugs prohibited for extralabel use in animals.**

The following drugs are prohibited for extralabel animal and human drug uses in food-producing animals:

(a) Chloramphenicol;

(b) Clenbuterol;

(c) Diethylstilbestrol (DES);

(d) Dimetridazole;

(e) Ipronidazole;

(f) Other nitroimidazoles;

(g) Furazolidone (except for approved topical use);

(h) Nitrofurazone (except for approved topical use); and

(i) Sulfonamide drugs in lactating dairy cattle (except approved use of sulfadimethoxine, sulfabromomethazine and sulfaethoxypyridazine).

Dated: October 22, 1996.

William B. Schultz,

*Deputy Commissioner for Policy.*

[FR Doc. 96–28662 Filed 11–6–96; 8:45 am]

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Part III

# Environmental Protection Agency

**40 CFR Part 247**

**Comprehensive Guideline for Procurement of Products Containing Recovered Materials; Proposed Rule and Notice**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 247

**[SWH–FRL–5628–4]**

**RIN 2050–AE23**

## Comprehensive Guideline for Procurement of Products Containing Recovered Materials

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency today is proposing an amendment to the May 1, 1995 Comprehensive Procurement Guideline (CPG). EPA is designating 13 new items that are or can be made with recovered materials. These items include shower and restroom dividers; latex paint; parking stops; channelizers; delineators; flexible delineators; snow fencing; garden and soaker hoses; lawn and garden edging; printer ribbons; ink jet cartridges; plastic envelopes; and pallets. In addition, this action clarifies EPA's previous designation of floor tiles, structural fiberboard, and laminated paperboard as items that can be made with recovered materials.

The CPG implements a section of the Resource Conservation and Recovery Act (RCRA). This section requires EPA to designate items that are or can be produced with recovered materials and to recommend practices for the procurement of designated items by procuring agencies. Once EPA designates an item, RCRA requires any procuring agency using appropriated Federal funds to procure that item to purchase it with the highest percentage of recovered materials practicable. Today's proposed action will foster markets for materials recovered from solid waste by using government purchasing power to stimulate the use of these materials in the manufacture of new products.

Today's proposed amendment also includes the procurement limitations set forth in RCRA on competition, price, availability, and performance. These limitations describe the circumstances in which procurement of designated items is not required. They were inadvertently omitted from the May 1, 1995 CPG.

**DATES:** EPA will accept public comments on this proposed rule until February 5, 1997.

**ADDRESSES:** To comment on this proposal, please send an original and two copies of comments to: RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Please place the docket number F–96–CP2P–FFFFF on your comments.

If any information is confidential, it should be identified as such. An original and two copies of Confidential Business Information (CBI) must be submitted under separate cover to: Document Control Officer (5305W), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Documents related to today's proposal are available for viewing at the RCRA Information Center (RIC), located at: U.S. Environmental Protection Agency, 1235 Jefferson Davis Highway, Ground Floor, Crystal Gateway One, Arlington, VA 22202. The RIC is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call (703) 603–9230 for appointments. Copies cost $.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information contact the RCRA Hotline at (800) 424–9346 or, in the Washington, D.C. area at (703) 412–9810. For technical information on individual item designations, contact the following EPA staff: Construction, landscaping, transportation, and park and recreation products'Terry Grist, (703) 308–7257; Non-paper office products—Janice Johnson, (703) 308–7280; Vehicular and miscellaneous products—Sue Nogas, (703) 308–7251; Paper and paper products—Dana Arnold, (703) 308–7279. For all other technical information, contact Terry Grist at (703) 308–7257.

**SUPPLEMENTARY INFORMATION:**

### Regulated Entities

This action may potentially affect those procuring agencies that purchase the following: shower and restroom dividers, latex paint, floor tiles, structural fiberboard, laminated paperboard, parking stops, temporary traffic control devices, snow fencing, garden and soaker hose, lawn and garden edging, printer ribbons, ink jet cartridges, plastic envelopes, or pallets. For purposes of RCRA section 6002, procuring agencies include the following: (1) Any Federal agency; (2) any State or local agencies using appropriated Federal funds for a procurement; or (3) any contractors with these agencies (with respect to work performed under the contract). The requirements of section 6002 apply to such procuring agencies only when procuring designated items where the price of the item exceeds $10,000 or the quantity of the item purchased in the previous year exceeded $10,000. Potential regulated entities for this rule are shown in Table 1.

TABLE 1.—ENTITIES POTENTIALLY SUBJECT TO SECTION 6002 REQUIREMENTS TRIGGERED BY CPG AMENDMENTS

| Category | Examples of regulated entities |
|---|---|
| Federal Government. | Federal departments or agencies that procure $10,000 or more worth of a designated item in a given year. |
| State Government. | A State agency that uses appropriated Federal funds to procure $10,000 or more worth of a designated item in a given year. |
| Local Government. | A local agency that uses appropriated Federal funds to procure $10,000 or more worth of a designated item in a given year. |
| Contractor ..... | A contractor working on a project funded by appropriated Federal funds that purchases $10,000 or more worth of a designated item in a given year. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities of which EPA is now aware that could potentially be subject to regulatory requirements triggered by this action. To determine whether your procurement practices are affected by this action, you should carefully examine the applicability criteria in 40 CFR 247.2. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### Preamble Outline

## I. Authority

This guideline is proposed under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962, and section 502 of Executive Order 12873, Federal Acquisition, Recycling, and Waste Prevention'' (58 FR 54911, October 22, 1993).

## II. Background

Section 6002(e) of the Resource Conservation and Recovery Act of 1976 (RCRA or the Act) requires EPA to designate items that are or can be made with recovered materials and to recommend practices to assist procuring agencies in meeting their obligations with respect to designated items under RCRA section 6002. After EPA designates an item, RCRA requires that each procuring agency, when purchasing a designated item, must purchase that item composed of the highest percentage of recovered materials practicable.

Executive Order 12873 (Executive Order) establishes the procedure for EPA to follow in implementing RCRA section 6002(e). Section 502 of the Executive Order directs EPA to issue a Comprehensive Procurement Guideline (CPG) that designates items that are or can be made with recovered materials. Concurrent with the CPG, EPA must publish its recommended procurement practices for purchasing designated items, including recovered materials content levels, in a related Recovered Materials Advisory Notice (RMAN). The Executive Order also directs EPA to update the CPG annually and to issue RMANs periodically to reflect changing market conditions. The CPG was published on May 1, 1995 (60 FR 21370). It established eight product categories, designated 19 new items, and consolidated five earlier item designations.

Today, EPA is clarifying the previous designations for floor tiles, structural fiberboard, and laminated paperboard, and is also proposing to designate 13 additional items. The items proposed for designation are listed below under their associated product category.

*Construction Products*
- Floor tiles (clarification)
- Structural Fiberboard and Laminated Paperboard (clarification)
- Shower and restroom dividers
- Latex paint

*Transportation Products*
- Parking stops
- Channelizers
- Delineators
- Flexible delineators

*Park and Recreation Products*
- Snow fencing

*Landscaping Products*
- Garden and soaker hoses
- Lawn and garden edging

*Non-Paper Office Products*
- Printer ribbons
- Ink jet cartridges
- Plastic envelopes

*Miscellaneous*
- Pallets

### *A. Criteria for Selecting Items for Designation*

While not limiting consideration to these criteria, RCRA section 6002(e) requires EPA to consider the following when determining which items it will designate:

(1) Availability of the item;

(2) Potential impact of the procurement of the item by procuring agencies on the solid waste stream;

(3) Economic and technological feasibility of producing the item; and

(4) Other uses for the recovered materials used to produce the item.

EPA also consulted with Federal procurement and requirement officials to identify other criteria to consider when selecting items for designation. Based on these discussions, the Agency concluded that the limitations set forth in RCRA section 6002(c) should also be factored into its selection decisions. This provision requires each procuring agency that procures an item designated by EPA to procure the item composed of the highest percentage of recovered materials practicable, while maintaining a satisfactory level of competition. A procuring agency, however, may decide not to procure an EPA-designated item containing recovered materials if it determines: (1) The item is not reasonably available within a reasonable period of time; (2) the item fails to meet the performance standards set forth in the agency's specification; or (3) the item is available only at an unreasonable price.

EPA recognized that the above criteria limit the conditions under which procuring agencies must purchase EPA-designated items with recovered materials content, and, thereby, could limit the potential impact of an individual item designation. (The limitations of section 6002(c) also effectively describe the circumstances in which a designated item is ''available'' for purposes of the statute.) For these reasons, EPA is also taking into account the limitations cited in RCRA section 6002(c) in its selection of items for designation in today's proposed CPG. Thus, the Agency developed the following criteria for use in selecting items for designation: use of materials found in solid waste, economic and technological feasibility and performance, impact of government procurement, availability and competition, and other uses for recovered materials. These criteria are discussed in detail in Section II of the document entitled, ''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses.'' A copy of this document is included in the RCRA public docket for this rule.

EPA has adopted two approaches in its designation of items that are made with recovered materials. For some items, such as floor tiles, the Agency designated broad categories of items and provided information in the RMAN as to their appropriate applications or uses. For other items, such as plastic trash bags, EPA designated specific items, and, in some instances, included in the designation the specific types of recovered materials or applications to which the designation applies. The

Agency explained these approaches to designating items in the preamble to the CPG (60 FR 21373, May 1, 1995).

EPA sometimes had information on the availability of a particular item made with a specific recovered material (e.g., plastic), but no information on the availability of the item made from a different recovered material or any indication that it is possible to make the item with a different recovered material. In these instances, EPA concluded that it was appropriate to include the specific material in the item designation in order to provide vital information to procuring agencies as they seek to fulfill their obligations to purchase designated items composed of the highest percentage of recovered materials practicable. This information enables the agencies to focus their efforts on products that are currently available for purchase, reducing their administrative burden. EPA also included information in the proposed CPG, as well as in the draft RMAN that accompanied the proposed CPG, that advised procuring agencies that EPA is not recommending the purchase of an item made from one particular material over a similar item made from another material. For example, EPA included the following statement in the preamble discussion for plastic desktop accessories (59 FR 18879, April 20, 1994): This designation does not preclude a procuring agency from purchasing desktop accessories manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing plastic desktop accessories, purchase these accessories made with recovered materials. * * *''

The Agency understands that some procuring agencies may believe that the designation of a broad category of items in the CPG requires them (1) to procure all items included in such category with recovered materials content and (2) to establish an affirmative procurement program for the entire category of items, even where specific items within the category may not meet current performance standards. This is clearly not required under RCRA as implemented through the CPG and the RMAN. RCRA section 6002 does not require a procuring agency to purchase items with recovered materials content that are not available or that do not meet a procuring agency's specifications or reasonable performance standards for the contemplated use. Further, section 6002 does not require a procuring agency to purchase such items if the item with recovered materials content is only available at an unreasonable price or the purchase of such item is inconsistent with maintaining a reasonable level of competition. However, EPA stresses that, when procuring any product for which a recovered materials alternative is available that meets the procuring agency's performance needs, if all other factors are equal, the procuring agency should seek to purchase the product made with highest percentage of recovered materials practicable.

The items proposed for designation today have all been evaluated with respect to the EPA's criteria. Details of these evaluations are discussed in Sections VI-XI of the ''Supporting Analyses'' background document. Sections VI-XI of this action provide a summary of EPA's rationale for designating these items.

### *B. Request for Comments*

EPA requests comments and information throughout this preamble. In general, the Agency is requesting comments on: (1) The items selected for designation and (2) the accuracy of the information presented in the discussions of the basis of the item designations. Requests for specific comments and information are included in the narrative discussions for each of the designated items, which follow in sections VI through XI.

EPA also is requesting comment on the draft RMAN. The RMAN can be found in the notice section of today's Federal Register. It recommends recovered materials content levels and procurement methods for each of the items EPA proposes to designate today.

### *C. Additional Information*

For additional background information, including information on RCRA requirements, Executive Order directives, the criteria and methodology for selecting the proposed designated items, and a list of other items considered for designation, please consult ''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses.'' Information on obtaining this background document is provided in the section XIV, Supporting Information and Internet Access.

## III. Procurement Limitations of RCRA Section 6002

In the May 1, 1995 CPG, the Agency amended 40 CFR 247.2 to include the RCRA provisions on the applicability of the guidelines to procuring agencies. (See 60 FR 21381.) In that amendment, EPA inadvertently failed to include the statutory limitations set forth in section 6002(c)(1) (A) through (C). These provisions authorize a procuring agency to decide not to purchase EPA designated items with recovered materials based on the following determinations:

1. The agency is unable to secure a satisfactory level of competition;
2. The item is not reasonably available within a reasonable period of time;
3. The item fails to meet the reasonable performance standards set forth in the agency's specification; and
4. The item is available only at an unreasonable price.

Today, in § 247.2(d), EPA is proposing to add the procurement limitations set forth in RCRA section 6002(c)(1) (A) through (C) which were inadvertently omitted in the May 1, 1995 CPG.

## IV. Clarification of Floor Tiles, Structural Fiberboard and Laminated Paperboard Designations

In the May 1, 1995 CPG, EPA designated floor tiles, structural fiberboard, and laminated paperboard and, in the RMAN, provided recommendations, including recovered materials content levels for these items. Since that publication, EPA has learned that there may be some confusion on the part of procuring agencies as to their obligation to purchase these items for specific applications. In fact, the Agency received inquiries regarding the requirements to purchase floor tile and structural fiberboard for use as acoustical ceiling tile. Based on these inquiries, the Agency concluded that it should clarify the obligations of procuring agencies with respect to these items. The Agency soon will publish an action further clarifying these issues.

### *A. Floor Tiles*

In the CPG, EPA designated 19 items that are, or can be, produced with recovered materials content, including floor tiles and patio blocks containing recovered rubber or plastic (40 CFR 247.12(e)). The Agency designated these items as broad categories of items, encompassing many different applications. In the RMAN, however, the Agency recommended that procuring agencies purchase floor tiles with specified minimum recovered rubber or plastic content for ''heavy duty/commercial type'' applications only. EPA limited the recommended applications to heavy-duty/commercial-type uses because, at the time the CPG was issued, the Agency was not aware of any manufacturers that made floor tile with recovered materials for standard office flooring. However, at least two manufacturers were reportedly considering using recovered materials in standard office flooring and one manufacturer indicated that these products would be available in 1995, the year the CPG was issued. This information suggested to the Agency that floor tiles could be made with recovered materials for standard office flooring. Therefore, the Agency elected to broadly designate floor tiles and limit its initial recommendations to heavy-

duty/commercial type uses. The Agency has no information that standard office floor tiles are currently commercially available containing recovered materials.

In the original CPG and RMAN, EPA used the term ''heavy-duty, commercial-type uses'' because there were no published industry-wide definitions to describe the applications to which the recovered materials requirements of the CPG should be applied. In the supporting analysis for the RMAN, EPA explained what it meant by ''heavy-duty, commercial-type applications.'' There, the Agency described, in general terms, a number of commercial and industrial settings where the use of such tiles with recovered materials content would be appropriate. These would include entranceways in airports and stores, furniture showrooms, skating rinks and fitness centers. EPA has learned that this discussion may have caused some confusion. Some procuring agencies may have confused EPA's description of the areas where, given special circumstances, such tiles might be appropriate, with an EPA recommendation that such tile should always be used in such settings. This was not the Agency's intention. Therefore, the Agency is today clarifying its recommendation that the use of these tiles would be appropriate for specialty purpose uses at such locations (e.g., raised, open-web tiles for drainage on school kitchen flooring). Such specialty purpose uses involve limited flooring areas where grease, tar, snow, ice, wetness or similar substances or conditions are likely to be present. Thus, EPA is not, at this time, recommending floor tile made with recovered materials for standard office or more general purpose uses.

*B. Structural Fiberboard and Laminated Paperboard*

In the CPG, EPA designated structural fiberboard and laminated paperboard products for applications other than building insulation (40 CFR 247.12(b)). EPA further included acoustical and non-acoustical ceiling tiles and lay-in panels in its list of applications to which the designation applies. Since the CPG was issued, one manufacturer of mineral fiber ceiling products has expressed concern over the scope of the structural fiberboard and laminated paperboard designations, particularly as they apply to acoustical and non-acoustical ceiling tiles and lay-in panels. EPA wants to clarify that the specific applications included in the structural fiberboard and laminated paperboard designation, i.e., building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard), apply to the purchase of cellulosic fiber structural fiberboard and laminated paperboard products only. The listed applications, and therefore the designation, do not apply to products made from other similar or competing materials. In other words, if a procuring agency is purchasing a cellulosic fiberboard acoustical ceiling tile, then the agency should purchase the ceiling tile made with recovered materials. However, if the agency prefers to purchase a ceiling tile made with mineral fiber rather than fiberboard, it is free to do so. In the latter instance, there is no requirement to purchase a cellulosic fiberboard ceiling tile.

V. Definitions

Today, in § 247.3, EPA is proposing to add definitions for the following new item-specific terms: channelizers, delineators, flexible delineators, garden hoses, ink jet cartridges, latex paint, lawn edging, pallets, parking stops, printer ribbons, restroom dividers, shower dividers, snow fencing, and soaker hoses. These definitions are based on industry definitions, including ASTM or other standard specifications, or represent descriptions of the scope of items being designated. EPA specifically requests comment on each of these definitions.

For several items being proposed for designation, EPA recommends in the RMAN, two-part content levels—a postconsumer recovered content component and a total recovered materials component. In these instances, EPA found that both types of materials were being used to manufacture a product. Recommending only postconsumer content levels would fail to acknowledge the contribution to solid waste management made by manufacturers using other manufacturers' byproducts as feedstock.

Because the item designations in today's action use the terms ''postconsumer materials'' and ''recovered materials,'' the definitions for these terms are repeated in this action as a reference for the convenience of the reader. These definitions were part of the May 1, 1995 CPG and can be found at 40 CFR 247.3. The Agency is not proposing to change these definitions and will not consider any comments submitted on these terms.

Postconsumer materials means a material or finished product that has served its intended end use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Postconsumer material is part of the broader category of recovered materials.

Recovered materials means waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within an original manufacturing process.

VI. Construction Products

*A. Shower and Restroom Dividers*

Based on the information obtained by EPA, shower and restroom dividers containing recovered materials are currently made using steel or various recovered plastics. Today, in § 247.12(f), EPA proposes to designate shower and restroom dividers containing recovered plastic or steel as items whose procurement will carry out the objectives of section 6002 of RCRA. A final designation would not preclude a procuring agency from purchasing shower and restroom dividers manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing shower and restroom dividers made from plastic or steel, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

1. Background

Shower and restroom dividers are used to create privacy by separating individual shower, toilet, and urinal compartments in commercial and institutional facilities. They are made from various plastics, steel, or wood.

2. Rationale for Designation

As discussed in Appendix V of the CPG II ''Supporting Analysis'' document, plastic and steel represent a significant component of the solid waste stream. Shower and restroom dividers are available made from steel or postconsumer and other recovered plastics, including high density polyethylene (HDPE), low density polyethylene (LDPE), and polypropylene (PP). EPA is not aware of shower and restroom dividers made from recovered wood and requests information in this regard.

EPA identified nine manufacturers of plastic dividers containing recovered materials and 21 manufacturers of dividers containing recovered steel. EPA did not identify any national or Federal specifications that preclude the use of recovered materials in shower or restroom dividers. Federal agencies, including the U.S. Army Corps of Engineers, and State and local

governments procure shower and restroom dividers. For a more detailed discussion of the criteria used to propose this item for designation, see the ''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses'' document located in the public docket for this action.

*B. Latex Paint*

Based on the information obtained by EPA, latex paint is available containing recovered and postconsumer latex paint. Today, in § 247.12(g), EPA proposes to designate latex paint containing recovered materials as an item whose procurement will carry out the objectives of section 6002 of RCRA.

1. Background

Latex paint is water-based paint widely used for interior and exterior architectural applications for residential and commercial buildings, as well as on vehicles, equipment, and for other special purposes. However, the Agency has limited information on paint used for non-architectural applications and requests further information. Latex paint is available containing postconsumer recovered paint from household hazardous waste (HHW) programs and paint-only or curbside collection programs. Latex paint can also be made from non-postconsumer recovered paint, which includes paint that is mis-tinted, out-of-date, or otherwise not sold to a consumer, which is returned by a distributor, retailer, or contractor to the manufacturer or to a paint recycler.

''Paint recyclers'' use postconsumer and other recovered latex paint to produce two different end products. Paint reprocessing produces a latex paint with consistent characteristics that are comparable to equivalent grade virgin latex paint. This paint is suitable for exterior and interior architectural applications. Paint consolidation, which involves blending postconsumer paint, results in a 100 percent postconsumer content mixture with characteristics that vary significantly from batch to batch. Consolidated paint, typically given away by the recycler, is generally suitable only for limited exterior applications such as covering graffiti.

2. Rationale for Designation

As discussed in Appendix V of the CPG II ''Supporting Analysis'' document, latex paint represents a significant component of the solid waste stream. Latex paint is available made from postconsumer and other recovered latex paint.

EPA identified seven manufacturers of reprocessed latex paint and consolidated latex paint. EPA did not identify any national or Federal specifications that preclude the use of recovered materials in latex paint, although there are specifications that establish limits for metals (including mercury and lead), cyanide, volatile and semi-volatile compounds, and polychlorinated biphenyls. According to the General Services Administration (GSA), over 69 military bases and other Federal purchasers as well as 28 private or local government agencies have purchased reprocessed latex paint through GSA. The Department of Navy's Chief of Naval Operations office issued a message encouraging the use of ''recycled'' latex paint for facilities maintenance. The U.S. Coast Guard also reports favorable results with ''recycled'' latex paint. For a more detailed discussion of the reasons for proposing the item for designation, see the ''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses'' document located in the public docket for this action.

VII. Transportation Products

*A. Parking Stops*

Based on the information obtained by EPA, parking stops are available containing postconsumer and other recovered plastic and/or rubber. Some manufacturers use wood chips, sawdust, or fiberglass in combination with plastic or rubber to make composite parking stops. In addition, parking stops may be made from cement and concrete containing coal fly ash or ground granulated blast furnace (GGBF) slag. These stops are typically made from concrete which is left over from construction-related projects. Today, in § 247.13(b), EPA proposes to designate parking stops made from concrete or containing recovered plastic and/or rubber as items whose procurement will carry out the objectives of section 6002 of RCRA. A final designation would not preclude a procuring agency from purchasing parking stops manufactured from another material. It simply requires that a procuring agency, when purchasing parking stops made from plastic, rubber, or concrete, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

1. Background

Parking stops are barriers used to mark parking spaces and to keep parked vehicles from rolling beyond a designated parking area. Parking stops may be made from concrete, wood, rubber, or plastic.

2. Rationale for Designation

As discussed in Appendix V of the CPG II ''Supporting Analysis'' document, rubber, plastic, coal fly ash, and GGBF slag all represent significant components of the solid waste stream. Parking stops are available made with postconsumer and other recovered plastics and rubber. Postconsumer sources include milk jugs, water bottles, and other containers, mixed plastic, and rubber (from used tires). Although EPA did not obtain specific information on parking stops made from cement and concrete containing coal fly ash or GGBF slag, the agency believes that, since cement and concrete can be made with GGBF, it is technically feasible to include these recovered materials in cement and concrete parking stops. EPA is not aware of parking stops made with recovered wood and requests information on whether they are commercially available.

EPA identified 57 manufacturers and vendors of parking stops containing postconsumer and other recovered materials. EPA is unaware of any national or Federal specifications or standards that preclude the use of recovered materials in parking stops. The U.S. National Park Service, various military bases, and State departments of transportation and park authorities purchase parking stops. For a more detailed discussion of the criteria used to propose this item for designation, see the ''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses'' document located in the public docket for this action.

*B. Temporary Traffic Control Devices*

EPA designated traffic cones and traffic barricades in the original CPG (60 FR 21383, May 1, 1995). Based on the information obtained by EPA, additional temporary traffic control devices are available containing postconsumer and other recovered plastic, rubber, and steel. Today, in § 247.13(c) through (e), EPA is proposing to designate channelizers, delineators, and flexible delineators containing recovered plastic, rubber, or steel as items whose procurement will carry out the objectives of section 6002 of RCRA. A final designation of these items would not preclude a procuring agency from purchasing these temporary traffic control devices manufactured from another material. It simply requires that a procuring agency, when purchasing these devices made from plastic, rubber, or steel, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

1. Background

Temporary traffic control devices are used to divert, channel, or restrict traffic flow. They include channelizers, delineators, and flexible delineators. Channelizers are barrels or drums that can be positioned to direct traffic through detours. Delineators are highly visible pavement markers that can be positioned to direct traffic or define boundaries. Flexible delineators bend if struck by a vehicle to prevent damage to the vehicle or the delineator.

2. Rationale for Designation

As discussed in Appendix V of the CPG II ''Supporting Analysis'' document, plastic, rubber and steel are significant components of the solid waste stream. Channelizers, delineators, and flexible delineators are available made with recovered plastic, rubber and steel.

EPA identified three manufacturers of channelizers, eight manufacturers of delineators and three manufacturers of flexible delineators containing postconsumer and other recovered materials. The Federal Highway Administration (FHWA) publishes the ''Manual on Uniform Traffic Control Devices,'' which contains specifications used by most States for the size, shape, mounting, and placement of traffic control devices. The FHWA specifications do not preclude the use of recovered materials in these devices. The States of North Carolina and Florida have specifications that require the use of recovered materials in their flexible delineators. The Veterans Administration and Federal Emergency Management Agency purchase temporary traffic control devices, and EPA believes that virtually every State department of transportation also purchases the items. For a more detailed discussion of the criteria used to propose these items for designation, see the ''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses'' document located in the public docket for this action.

VIII. Park and Recreation Products

*A. Snow Fencing*

Based on the information obtained by EPA, snow fencing is available containing recovered plastic. Today, in § 247.14(b), EPA proposes to designate snow fencing containing recovered plastic as an item whose procurement will carry out the objectives of section 6002 of RCRA. A final designation of this items would not preclude a procuring agency from purchasing snow fencing manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing snow fencing made from plastic, purchase this item made with recovered materials when this item meets applicable specifications and performance requirements.

1. Background

Snow fencing is constructed from plastic in an open-weave pattern or from wooden slats held together with wire strands. It is used to control drifting snow, to delineate construction areas, and to protect sand dunes.

2. Rationale for Designation

As discussed in Appendix V of the CPG II ''Supporting Analysis'' document, plastic represents a significant component of the solid waste stream. Snow fencing is available made with postconsumer and other recovered HDPE plastic from milk jugs, water bottles, and other containers. EPA is not aware of snow fencing made from recovered wood and requests information on whether it is now commercially available.

EPA identified three manufacturers of snow fencing containing recovered and postconsumer HDPE. According to information obtained by EPA, there are no national or Federal specifications that preclude the use of recovered materials in the manufacture of snow fencing. Federal agencies, such as the National Park Service and the Army Corps of Engineers, and State agencies purchase snow fencing. According to at least two State agencies, recovered-content snow fencing met the performance requirements for the applications in which it was used. For a more detailed discussion of the criteria used to propose this item for designation, see the ''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses'' document located in the public docket for this action.

IX. Landscaping Products

*A. Garden and Soaker Hoses*

Based on the information obtained by EPA, garden and soaker hoses are available containing recovered plastic or rubber. Today, in § 247.15(c), EPA proposes to designate garden and soaker hoses containing recovered plastic or rubber as items whose procurement will carry out the objectives of section 6002 of RCRA. A final designation of these items would not preclude a procuring agency from purchasing garden and soaker hoses manufactured from another material. It simply requires that a procuring agency, when purchasing garden and soaker hoses made from plastic or rubber, purchase this item made with recovered materials when these items meet applicable specifications and performance requirements.

1. Background

A garden hose is flexible tubing used to conduct water to a specific location. It is usually made from PVC plastic or rubber. A soaker hose is perforated flexible tubing used to deliver gentle irrigation to plants and is typically made of rubber.

2. Rationale for Designation

As discussed in Appendix V of the CPG II ''Supporting Analysis'' document, rubber and plastic represent a significant component of the solid waste stream. Garden and soaker hoses are available made with postconsumer and other recovered PVC plastic or rubber.

EPA identified five manufacturers of postconsumer- and other recovered-content landscaping hoses; two that only produce garden hoses, one that only produces soaker hoses, and two that produce both. All five companies use PVC plastic and/or rubber to manufacture their products. There is an American Society for Testing and Materials (ASTM) specification for garden hose that addresses physical and performance characteristics, but does not preclude the use of recovered materials. Green Seal, an independent standards organization, specifies the use of 50 percent postconsumer rubber in garden hose and 65 percent postconsumer rubber in soaker hose. The U.S. Department of Defense, National Park Service, and State agencies purchase garden and soaker hoses. For a more detailed discussion of the criteria used to propose this item for designation, see the ''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses'' document located in the public docket for this action.

*B. Lawn and Garden Edging*

Based on the information obtained by EPA, lawn and garden edging is available containing recovered plastics or rubber. Today, in § 247.15(d), EPA proposes to designate lawn and garden edging containing recovered plastic or rubber as items whose procurement will carry out the objectives of section 6002 of RCRA. A final designation of these items would not preclude a procuring agency from purchasing lawn and garden edging manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing lawn and garden edging made from plastic or rubber, purchase these items made with

recovered materials when these items meet applicable specifications and performance requirements.

1. Background

Lawn and garden edging is used as a barrier between lawns and landscaped areas or garden beds to prevent grass, roots, or weeds from spreading to the landscaped areas. It is manufactured from postconsumer and other recovered HDPE, mixed plastics, and/or rubber.

2. Rationale for Designation

As discussed in Appendix V of the CPG II ''Supporting Analysis'' document, rubber and plastics represent a significant component of the solid waste stream. Lawn and garden edging is available made with postconsumer and other recovered plastics. Postconsumer sources of materials used in lawn and garden edging include milk jugs, water bottles, and other containers, various mixed plastic resins, and rubber (from tires). Edging may also be manufactured using wood; however, EPA is not aware of any lawn and garden edging made from recovered wood and requests information on whether these items are commercially available.

EPA identified seven manufacturers of lawn and garden edging containing postconsumer and other recovered materials. According to information obtained by EPA, there are no national or Federal specifications that preclude the use of recovered materials in the manufacture of lawn and garden edging. Although EPA was unable to obtain any information on the purchase of lawn and garden edging by government agencies, EPA is aware that lawn and garden edging is procured by such agencies as the National Park Service and State and local parks and recreation offices. For a more detailed discussion of the criteria used to propose this item for designation, see the ''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses'' document located in the public docket for this action.

X. Non-Paper Office Products

*A. Printer Ribbons*

Based on the information obtained by EPA, printer ribbons used in impact printers can be remanufactured by reinking the ribbon or reloading the printer ribbon cartridge with new ribbon. Today, in § 247.16(f), EPA proposes to designate printer ribbons as an item whose procurement will carry out the objectives of section 6002 of RCRA.

1. Background

Printer ribbons are used in dot matrix and other types of impact printers used in homes, offices, and retail stores across the United States. The ribbons are housed in an outer plastic casing (cartridge), which contains the ribbon and internal gears.

2. Rationale for Designation

As discussed in Appendix V of the CPG II ''Supporting Analysis'' document, plastic represents a significant component of the solid waste stream. The plastic contained in printer ribbon cartridges can be diverted from the waste stream if the printer ribbon is reinked or the cartridge is reloaded with new ribbon.

EPA identified 18 companies that service printer ribbons for reuse. Seven of the companies reink ribbons and five reload the cartridges with new ribbon; EPA was unable to obtain information from the remaining six companies. The U.S. Postal Service Processing and Distribution Center in Portland, Maine, EPA Region 6, and the States of Alabama and Florida have used remanufactured printer ribbons successfully. For a more detailed discussion of the criteria used to propose this item for designation, see the ''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses'' document located in the public docket for this action.

*B. Ink Jet Cartridges*

Based on the information obtained by EPA, ink jet ribbon cartridges for ink jet printers and facsimile machines can be remanufactured by refilling the cartridge with ink. Today, in § 247.16(g), EPA proposes to designate ink jet cartridges as an item whose procurement will carry out the objectives of section 6002 of RCRA.

1. Background

Ink jet cartridges are plastic cases containing ink, a pump, filter, nozzle, and internal circuitry. They are used in ink jet printers and in some types of facsimile machines and plotters.

2. Rationale for Designation

As discussed in Appendix V of the CPG II ''Supporting Analysis'' document, plastic represents a significant component of the solid waste stream. The plastic contained in ink jet cartridges can be diverted from the waste stream if the cartridge is refilled with new ink.

EPA identified 24 companies that refill ink jet cartridges for customers nationwide. In addition to remanufacturers, do-it-yourself kits are available for customers to refill their own ink jet cartridges. EPA Region 6, the U.S. Army Corps of Engineers, the City of Tucson, and the States of Colorado and Florida have used refilled ink jet cartridges. For a more detailed discussion of the criteria used to propose this item for designation, see the ''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses'' document located in the public docket for this action.

*C. Plastic Envelopes*

Based on the information obtained by EPA, plastic envelopes are available containing recovered plastics. Today, in § 247.16(h), EPA proposes to designate plastic envelopes containing recovered materials as an item whose procurement will carry out the objectives of section 6002 of RCRA. A final designation of this item would not preclude a procuring agency from purchasing envelopes manufactured from paper products, but would simply require that a procuring agency, when purchasing plastic envelopes, purchase them made with recovered materials when these items meet applicable specifications and performance requirements. When purchasing envelopes made from paper, procuring agencies should consult the Paper Products RMAN which was issued in the Federal Register on May 29, 1996 at 61 FR 26985.

1. Background

Plastic envelopes are manufactured from a trademarked spunbonded olefin or from tri-extruded polyolefins or polyethylenes. They are used most commonly by the express mail, insurance, bank, legal, medical, and international mail industries in heavy-duty, security-related, and other specialized mailing applications.

2. Rationale for Designation

As discussed in Appendix V of the CPG II ''Supporting Analysis'' document, plastic represents a significant component of the solid waste stream. Plastic envelopes are available made with postconsumer and other recovered plastics. Postconsumer sources include milk jugs, water bottles, and other containers.

EPA identified three manufacturers of plastic envelopes containing postconsumer and other recovered LDPE or HDPE. According to information obtained by EPA, there are no national or Federal specifications that preclude the use of recovered materials in the manufacture of plastic envelopes. Plastic envelopes are purchased or used by most government agencies, although the U.S. Navy

requests that they not be used to transport materials to ships because they complicate onboard disposal practices. For a more detailed discussion of the criteria used to propose this item for designation, see the ''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses'' document located in the public docket for this action.

XI. Miscellaneous Products

*A. Pallets*

Based on the information obtained by EPA, cargo and freight pallets are available containing recovered wood, plastic, or paperboard. Today, in § 247.17(a), EPA proposes to designate pallets containing recovered wood, plastic, or paperboard as an item whose procurement will carry out the objectives of section 6002 of RCRA. A final designation of this item would not preclude a procuring agency from purchasing pallets manufactured from another material. It simply requires that a procuring agency, when purchasing pallets made from plastic, wood, or paperboard, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

1. Background

Pallets are portable platforms for storing or moving cargo or freight. They can be manufactured from wood, plastic, or corrugated paperboard.

2. Rationale for Designation

As discussed in Appendix V of the CPG II ''Supporting Analysis'' document, wood, plastic, and corrugated paperboard represent significant components of the solid waste stream. Pallets are available manufactured from postconsumer and other recovered wood, plastic or old corrugated containers.

EPA obtained information from eight manufacturers of recovered and postconsumer wood pallets, 19 manufacturers of recovered and postconsumer plastic pallets, and two manufacturers of recovered and postconsumer corrugated pallets. EPA identified one specification for pallets, developed by the Grocery Manufacturers of America; it does not preclude the use of recovered materials in pallets. Army Logistics is developing a performance-based pallet specification that may limit the use of remanufactured pallets to specific applications. The Defense Logistics Agency procures millions of pallets of varying sizes each year. For a more detailed discussion of the criteria used to propose this item for designation, see the ''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses'' document located in the public docket for this action.

XII. Designated Item Availability

EPA has identified a number of manufacturers and vendors of the items proposed for designation in today's rule. Once the item designations in today's proposal become final, these lists will be placed in the RCRA docket for this action and updated periodically as new sources are identified and product information changes. Procuring agencies should contact the manufacturers/vendors directly to discuss their specific needs and to obtain detailed information on the availability and price of recycled products meeting those needs.

Other information is available from the General Services Administration (GSA), the Defense Logistics Agency (DLA), State and local recycling offices, private corporations, and trade associations. Refer to Section X of the document, ''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses,'' located in the RCRA public docket, for more detailed information on these sources of information.

XIII. Economic Impact Analysis

*A. Requirements of Executive Order 12866*

Executive Order 12866 requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''significant'' regulatory action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA estimates that the costs associated with this proposed rule is well below the $100 million threshold. To enable the Agency to evaluate the potential impact of today's action, EPA has prepared an Economic Impact Analysis (EIA), as discussed below. For more information on the estimated economic impact of this proposed rule, see the ''Economic Impact Analysis for the Comprehensive Procurement Guideline (CPG) II,'' located in the RCRA public docket for the proposed rule.

1. Summary of Costs

As shown in Table 2 below, EPA estimates that the annualized costs of today's rule will range from $4.7 to $8.7 million, with costs being spread across all procuring agencies (i.e., Federal agencies, State and local agencies that use appropriated Federal funds to procure designated items, and contractors to all three). These costs are annualized over a 10-year period at a three percent discount rate. Because there is considerable uncertainty regarding several of the parameters that drive the costs, EPA conducted sensitivity analyses to identify the range of potential costs of today's rule. Thus, high-end and low-end estimates are presented along with the best estimate. The primary parameter affecting the range of cost estimates is the number of products each procuring agency is assumed to procure each year. Details of the costs associated with this proposed rule are provided in the Economic Impact Analysis for this rule, located in the RCRA public docket.

TABLE 2.—SUMMARY OF ANNUALIZED COSTS OF CPG AMENDMENTS TO ALL PROCURING AGENCIES

| Procuring agency | Total annualized costs ($1000) | Best estimate, total annualized costs ($1000) |
|---|---|---|
| Federal Agencies | $5,400–$2,900 | $5,400 |
| States | 970–530 | 970 |
| Local Governments | 2,300–1,260 | 1,700 |
| Contractors | 79–26 | 54 |
| Total | 8,700–4,700 | 8,100 |

As a result of today's proposed rule, procuring agencies will be required to perform certain activities pursuant to RCRA section 6002. The costs shown in Table 2, represent the estimated annualized costs associated with these activities, which include: rule review and implementation; estimation, certification, and verification of designated item procurement; and for Federal agencies, reporting and recordkeeping. Table 2 also includes estimates for Federal agency's that will incur costs for specification revisions

and affirmative procurement program modification. More details of the costs associated with today's rule are included in the aforementioned Economic Impact Analysis.

With regard to possible impacts to business, including small businesses, there may be both positive and negative impacts to individual businesses. EPA anticipates that this proposed rule will provide additional opportunities for recycling businesses to begin supplying recovered materials to manufacturers and products made from recovered materials to procuring agencies. In addition, other businesses, including small businesses, that do not directly contract with procuring agencies may be affected positively by the increased demand for recovered materials. These include businesses involved in materials recovery programs and materials recycling. Municipalities that run recycling programs are also expected to benefit from increased demand for certain recovered materials.

EPA is unable to determine the number of businesses, including small businesses, that may be adversely impacted by this proposed rule. It is possible that if a business that currently supplies products to a procuring agency uses virgin materials only, the amendments proposed to the CPG may reduce its ability to compete for future contracts. However, the proposed amendments to the CPG will not affect existing purchase orders, nor will it preclude businesses from adapting their product lines to meet new specifications or solicitation requirements for products containing recovered materials. Thus, many businesses, including small businesses, that market to procuring agencies have the option to adapt their product lines to meet specifications.

2. Product Cost

Another potential cost of today's action is the possible price differential between an item made with recovered materials and an equivalent item manufactured using virgin materials. As discussed in Appendices I and IV of the ''Supporting Analyses,'' relative prices of recycled content products compared to prices of comparable virgin products vary. In many cases, recycled content products are less expensive than their virgin counterparts. In other cases, virgin products have lower prices than recycled content products. Many factors can affect the price of various products. For example, temporary fluctuations in the overall economy can create oversupplies of virgin products, leading to a decrease in prices for these items. Under RCRA section 6002(c), procuring agencies are not required to purchase a product containing recovered materials if it is only available at an unreasonable price. However, the decision to pay more or less for such a product is left to the procuring agency.

3. Summary of Benefits

EPA anticipates that this rule will result in increased opportunities for recycling and waste prevention. Waste prevention can reduce the nation's reliance on natural resources by reducing the amount of materials used in making products. Less raw materials use results in a commensurate reduction in energy use and a reduction in the generation and release of air and water pollutants associated with manufacturing. Additionally, waste prevention leads to a reduction in the environmental impacts of mining, harvesting, and other extraction processes.

Recycling can effect the more efficient use of natural resources. For many products, the use of recovered materials in manufacturing can result in significantly lower energy and material input costs than when virgin raw materials are used; reduce the generation and release of air and water pollutants often associated with manufacturing; and reduce the environmental impacts of mining, harvesting, and other extraction of natural resources. In addition to conserving non-renewable resources, recycling can also divert large amounts of materials from landfills, conserving increasingly valuable space for the management of materials that truly require disposal. This reduces the need to expand existing or site new disposal facilities, allowing local government officials to devote more attention to health, education, and safety issues.

By purchasing products made from recovered materials, government agencies can increase opportunities for realizing these benefits. On a national and regional level, the proposed rule can result in expanding and strengthening markets for materials diverted or recovered through public and private collection programs. Also, since many State and local governments, as well as private companies, reference EPA guidelines when purchasing designated items, this rule can result in increased purchase of recycled products, locally, regionally, and nationally and provide opportunities for businesses engaged in recycling activities.

*B. Unfunded Mandates Reform Act of 1995 and Consultation With State, Local, and Tribal Governments*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), P.L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not include a Federal mandate that may result in estimated annualized costs of $100 million or more to either State or local governments in the aggregate, or to the private sector. To the extent enforceable duties arise as a result of this proposed rule on State and local governments, they are exempt from inclusion as Federal intergovernmental mandates if such duties are conditions of Federal assistance. Even if they are not conditions of Federal assistance, such enforceable duties do not result in a significant regulatory action being imposed upon State and local governments since the estimated aggregate cost of compliance for them are not expected to exceed, at the maximum, $3.3 million annually. The cost of enforceable duties which may arise as a result of today's proposed rule on the private sector are estimated not to exceed $79,000 annually. Thus, the proposed rule is not subject to the written statement requirement in sections 202 and 205 of the Act.

The newly designated items included in the CPG may give rise to additional

obligations under section 6002(i) (requiring procuring agencies to adopt affirmative procurement program and to amend their specifications) for state and local governments. As noted above, the expense associated with any additional costs is not expected to exceed, at the maximum, $3.3 million annually. In compliance with E.O. 12875, which requires the involvement of State and local governments in the development of certain Federal regulatory actions, EPA conducted a wide outreach effort and actively sought the input of representatives of state and local governments in the process of developing its guidelines.

When EPA proposes to designate items in the CPG, information about the proposal is distributed to governmental organizations so that they can inform their members about the proposals and solicit their comments. These organizations include the U.S. Conference of Mayors, the National Association of Counties, the National Association of Towns and Townships, the National Association of State Purchasing Officials, and the American Association of State Highway and Transportation Officials. EPA also provides information to potentially affected entities through relevant recycling, solid waste, environmental, and industry publications. In addition, EPA's regional offices sponsor and participate in regional and state meetings at which information about proposed and final designations of items in the CPG is presented. Finally, EPA has sponsored buy-recycled education and outreach activities by organizations such as the U.S. Conference of Mayors, the Northeast Recycling Council, the Environmental Defense Fund, Keep America Beautiful, and the California Local Government Commission, whose target audience includes small governmental entities.

The requirements do not significantly affect small governments because they are subject to the same requirements as other entities whose duties result from today's rule. As discussed above, the expense associated with any additional costs to State and local governments, is not expected to exceed, at the maximum, $3.3 million annually. The requirements do not uniquely affect small governments because they have the same ability to purchase these designated items as other entities whose duties result from today's rule. Additionally, use of designated items affects small governments in the same manner as other such entities. Thus, any applicable requirements of section 203 have been satisfied.

*C. Impacted Entities*

RCRA section 6002 applies to procuring agencies that use at least a portion of Federal funds to procure over $10,000 worth of a designated product in a given year. EPA estimates that this rule would apply to 35 Federal agencies, all 56 states and territories and 1,900 local governments. EPA calculated the number of local entities that would be impacted based on information regarding the amount of Federal funds that are dispersed to specific counties. In addition, EPA assumed that between 100 and 1,000 contractors may be affected. A description of this information is provided in the Economic Impact Analysis for today's rule.

*D. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), provides that, whenever an agency proposes a rule under 5 U.S.C. 553, the agency must prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed for final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The purpose of the RFA is to establish procedures that ensure that Federal agencies solicit and consider alternatives to rules so as to minimize their burdensome impact on small entities. The Act is designed to encourage agencies to tailor their rules to the size and nature of those to be regulated whenever this is consistent with the underlying statute authorizing the rule.

However, the RFA does not require a regulatory flexibility analysis if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities. 5 U.S.C. 604 & 605. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), therefore, I certify that today's proposed rule will not, if promulgated, have a significant adverse impact on a substantial number of small entities.

In the case of small entities which are small governmental jurisdictions, EPA has concluded that the proposal, if promulgated, will not have a significant economic impact. EPA concluded that no small government with a population of less than 50,000 is likely to incur costs associated with the designation of the 13 items because it is improbable that such jurisdictions will purchase more than $10,000 of any designated item. Consequently, section 6002 would not apply to their purchases of designated items. Moreover, there is no evidence that complying with the requirements of section 6002 would impose significant additional costs on the small governmental entity to comply in the event that a small governmental jurisdiction purchased more than $10,000 worth of a designated item. This is the case because in many instances items with recovered materials content may be less expensive than items produced from virgin material.

Furthermore, EPA similarly concluded that the economic impact on small businesses would not be significant. Any costs to small businesses that are ''procuring agencies'' (and subject to section 6002) are likely to be insubstantial. To the extent there are increased costs, such costs are directly associated with compliance with a contract with a Federal agency for a designated procurement items and should be recovered in the contract price for the item. Further, any subsidiary costs associated with a small business's status as a ''procuring agency'' would not be substantial. Even if a small business is required to purchase other items with recovered materials content, it is unclear that such items will necessarily be more expensive than items with virgin content.

The basis for EPA's conclusions that the proposal, if adopted, will not have a significant impact on a substantial number of small entities is described in greater detail in the ''Economic Impact Analysis'' for the proposed rule which is located in the RCRA public docket.

1. Small Businesses

The CPG applies to small businesses that are ''procuring agencies.'' The potential economic impact of the CPG on small businesses that are ''procuring agencies'' is minimal. RCRA section 6002 applies to the contractor with a Federal agency (or a state or local agency that is a procuring agency under Section 6002) when the contractor is purchasing a designated item, is using Federal money to do so, and exceeds the $10,000 threshold. There is an exception for purchases that are ''incidental to'' the purposes of the contract, i.e., not the direct result of the funds disbursement. Therefore, for example, a courier service contractor is

not required to purchase re-refined oil and retread tires for its fleets because purchases of these items are incidental to the purpose of the contract. Therefore, as a practical matters, there would be very limited circumstances when a contractor's status as a ''procuring agency'' for section 6002 purposes would impose additional costs on the contractor. Thus, for example, if the State or Federal agency is contracting with a supplier to obtain a designated item, then the cost of the designated item (and any associated costs of meeting section 6002 requirements) to the supplier presumably will be fully recovered in the contract price.

Based on the above, EPA has determined that the effect of today's proposed rule on small entities would be minimal.

While not a factor relevant to determining whether the rule will have a significant impact for RFA purposes, EPA believes that the effect of today's rule would be to provide positive opportunities to businesses engaged in recycling and the manufacture of recycled products. Purchase and use of recycled product by procuring agencies increases demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies. Technological innovation associated with the use of recovered materials can translate into economic growth and increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

## XIV. Supporting Information and Accessing Internet

The index of supporting materials for the proposed rule is available in the RIC and on the Internet. The address and telephone number of the RIC are provided in **ADDRESSES** above. The following supporting materials are available on the Internet:

''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses,'' U.S. EPA, Office of Solid Waste and Emergency Response, August 1, 1996.

''Recovered Materials Advisory Notice (RMAN) II—Supporting Analyses,'' U.S. EPA, Office of Solid Waste and Emergency Response, August 1, 1996.

Copies of the following supporting materials are available for viewing at the RIC only:

''Recovered Materials Product Research for the Comprehensive Procurement Guideline II,'' prepared for U.S. EPA by Eastern Research Group, July 24, 1996.

''Research on Items for Designation in the Comprehensive Procurement Guideline,'' December 19, 1995.

''Summary of Information Submitted in Response to EPA's Request for Information on the Designation of Items for the CPG,'' prepared for U.S. EPA by Eastern Research Group, April 12, 1996.

Follow these instructions to access the information electronically:

Gopher: gopher.epa.gov
WWW: http://www.epa.gov
Dial-up: 919 558–0335

The materials can be accessed off the main EPA Gopher menu, in the directory EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/[Non-Hazardous Waste—RCRA Subtitle D/Procurement/CPG].

FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/gopher/OSWRCRA.

List of Subjects in 40 CFR Part 247

Environmental protection, Channelizers, Delineators, Flexible delineators, Floor tile, Garden and soaker hose, Government procurement, Ink jet cartridge, Laminated paperboard, Landscaping industry, Latex paint, Lawn and garden edging, Office products, Pallets, Park and recreation products, Parking stops, Printer ribbon, Recycling, Shower and restroom dividers, Snow fencing, Structural fiberboard, Temporary traffic control devices.

Dated: November 1, 1996.

Carol M. Browner,

*Administrator.*

For the reasons set out in the preamble, EPA proposes to amend 40 CFR Part 247 as follows:

## PART 247—COMPREHENSIVE PROCUREMENT GUIDELINE FOR PRODUCTS CONTAINING RECOVERED MATERIALS

1. The authority citation for Part 247 continues to read as follows:

Authority: 42 U.S.C. 6912(a) and 6962; E.O. 12873, 58 FR 54911.

2. In § 247.2, paragraph (d) is added to read as follows:

### § 247.2 Applicability.

* * * * *

(d) RCRA section 6002(c)(1) requires procuring agencies to procure designated items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, considering such guidelines. Procuring agencies may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

3. In § 247.3, the following definitions are added alphabetically:

* * * * *

*Channelizers* means highly visible barrels or drums that can be positioned to direct traffic through detours;

* * * * *

*Delineator* means a highly visible pavement marker that can be positioned to direct traffic or define boundaries;

* * * * * *

*Flexible delineator* means a highly visible marker that can be positioned to direct traffic or define boundaries and that will flex if struck by a vehicle to prevent damage to the vehicle or the delineator;

* * * * *

*Garden hose* means a flexible tubing that conducts water to a specific location;

* * * * *

*Ink jet cartridge* means a casing containing ink used in ink jet printers and some types of facsimile machines and plotters;

* * * * *

*Latex paint* means a water-based decorative or protective covering having a latex binder;

* * * * *

*Lawn edging* means a barrier used between lawns and landscaped areas or garden beds to prevent grass roots or weeds from spreading to the landscaped areas;

* * * * *

*Pallet* means a portable platform for storing or moving cargo or freight;

* * * * *

*Parking stop* means a barrier used to mark parking spaces and keep parked vehicles from rolling beyond a designated parking area;

* * * * *

*Printer ribbon* means a nylon fabric designed to hold ink and used in dot matrix and other types of impact printers;

* * * * *

*Restroom divider* means a barrier used to provide privacy in public restroom facilities;

* * * * *

*Shower divider* means a water-proof barrier used to provide privacy in public shower facilities;

* * * * *

*Snow fencing* means a barrier with an open-weave pattern that can be used to control drifting snow or sand by restricting the force of wind;

* * * * *

*Soaker hose* means a perforated flexible tubing that is used to deliver gentle irrigation to plants;

* * * * *

4. Section 247.12 is amended by adding new paragraphs (f) and (g) to read as follows:

**§ 247.12 Construction products.**

* * * * *

(f) Shower and restroom dividers containing recovered plastic or steel.

(g) Latex paint.

5. Section 247.13 is amended by designating the existing text as paragraph (a) and by adding new paragraphs (b), (c), (d), and (e) to read as follows:

**§ 247.13 Transportation products.**

* * * * *

(b) Parking stops made from concrete or containing recovered plastic or rubber.

(c) Channelizers containing recovered plastic or rubber.

(d) Delineators containing recovered plastic, rubber, or steel.

(e) Flexible delineators containing recovered plastic.

6. Section 247.14 is amended by redesignating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

**§ 247.14 Park and recreation products.**

* * * * *

(b) Snow fencing containing recovered plastic.

7. In § 247.15, new paragraphs (c) and (d) are added to read as follows:

**§ 247.15 Landscaping products.**

* * * * *

(c) Garden and soaker hoses containing recovered plastic or rubber.

(d) Lawn and garden edging containing recovered plastic or rubber.

8. In § 247.16, new paragraphs (f), (g), and (h) are added to read as follows:

**§ 247.16 Non-paper office products.**

* * * * *

(f) Printer ribbons.

(g) Ink jet cartridges.

(h) Plastic envelopes.

9. Section 247.17 is revised to read as follows:

**§ 247.17 Miscellaneous Products.**

(a) Pallets containing recovered wood, plastic, or paperboard.

(b) (Reserved)

[FR Doc. 96–28733 Filed 11–6–96; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[SWH-FRL–5628–5]**

### Recovered Materials Advisory Notice

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of draft document for review.

**SUMMARY:** The Environmental Protection Agency today is providing notice of the issuance of a draft Recovered Materials Advisory Notice (RMAN) which provides guidance to procuring agencies for purchasing certain items containing recovered materials. Under section 6002 of the Resource Conservation and Recovery Act (RCRA) of 1976, EPA designates items that are or can be made with recovered materials and provides recommendations for the procurement of these items. Elsewhere in today's Federal Register, EPA is proposing to designate 13 additional items, including shower and restroom dividers; latex paint; parking stops; channelizers; delineators; flexible delineators; snow fencing; garden and soaker hoses; lawn and garden edging; printer ribbons; ink jet cartridges; plastic envelopes; and pallets. Today's RMAN contains draft recommended recovered materials content levels for these items. In addition, today's draft RMAN clarifies recommendations previously made for floor tiles on May 1, 1995 (60 FR 21392).

**DATES:** EPA will accept public comments on the recommendations contained in the draft Recovered Materials Advisory Notice until February 5, 1997.

**ADDRESSES:** To comment on this notice, please send an original and two copies of comments to: RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Please place the docket number F–96–CP2P–FFFFF on your comments.

If any information is confidential, it should be identified as such. An original and two copies of Confidential Business Information (CBI) must be submitted under separate cover to: Document Control Officer (5305), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Documents related to today's notice are available for viewing at the RCRA Information Center (RIC), located at: U.S. Environmental Protection Agency, 1235 Jefferson Davis Highway, Ground Floor, Crystal Gateway One, Arlington, VA 22202. The RIC is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call (703) 603–9230 for appointments. Copies cost $.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information contact the RCRA Hotline at (800) 424–9346 or (703) 412–9810. For technical information on individual item recommendations, contact the following EPA staff: Construction, landscaping, transportation, and park and recreation products—Terry Grist, (703) 308–7257; Non-paper office products—Janice Johnson, (703) 308–7280; Vehicular and miscellaneous products—Sue Nogas, (703) 308–7251; Paper and paper products—Dana Arnold, (703) 308–7279. For all other technical information, contact Terry Grist at (703) 308–7257.

**SUPPLEMENTARY INFORMATION:**

I. Authority

The draft Recovered Materials Advisory Notice (RMAN) is issued under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 2962, and section 502 of Executive Order 12873 (58 FR 54911, October 20, 1993).

II. Background

Section 6002 of the Resource Conservation and Recovery Act of 1976 (RCRA) establishes a Federal buy-recycled program. RCRA section 6002(e) requires EPA to (1) designate items that are or can be produced with recovered materials and (2) prepare guidelines to assist procuring agencies in complying with affirmative procurement requirements set forth in paragraphs (c), (d), and (i) of section 6002. Once EPA has designated items, section 6002 requires that any procuring agency using appropriated Federal funds to procure those items. For the purposes of RCRA section 6002, procuring agencies include the following: (1) Any Federal agency; (2) any State or local agencies using appropriated Federal funds for a procurement; or (3) any contractors with these agencies (with respect to work performed under the contract). The requirements of section 6002 apply to such procuring agencies only when procuring designated items where the price of the item exceeds $10,000 or the quantity of the item purchased in the previous year exceeded $10,000.

Executive Order 12873 (58 FR 54911, October 22, 1993) directs EPA to designate items in a Comprehensive Procurement Guideline and publish guidance that contains EPA's recommended recovered content levels for the designated items in Recovered Materials Advisory Notices. The Executive Order further directs EPA to update the CPG annually and the RMAN periodically to reflect changes in market conditions. EPA codifies the CPG designations in the Code of Federal Regulations (CFR), but, because the recommendations are guidance, the RMAN is not codified in the CFR. This process enables EPA to make timely revisions to its recommendations in response to changes in a product's availability or recovered materials content.

EPA issued a CPG on May 1, 1995 (60 FR 21370) designating 19 new items and published an RMAN for the designated items on the same day (60 FR 21386). These notices also consolidated the guidelines previously issued for five items designated between 1983 and 1989. Today, in a separate section of the Federal Register, EPA is proposing to designate 13 new items. Today's draft RMAN recommends recovered materials content levels and procurement guidance for these 13 new items which include: (1) Shower and restroom dividers; (2) latex paint; (3) parking stops; (4) channelizers; (5) delineators; (6) flexible delineators; (7) snow fencing; (8) garden and soaker hoses; (9) lawn and garden edging; (10) printer ribbons; (11) ink jet cartridges; (12) plastic envelopes; and (13) pallets. This notice also provides clarification on recommendations made in the previous RMAN for floor tiles which was issued on May 1, 1995. Once finalized, today's RMAN will serve as companion guidance to the original RMAN.

EPA, once again, wants to stress that the recommendations in its RMAN are just that—recommendations and guidance to procuring agencies in fulfilling their obligations under section 6002. The designation of an item as one that is or can be produced with recovered materials and the inclusions of recommended content levels for an item in the RMAN does not compel the procurement of an item when the item is not suitable for its intended purpose. Section 6002 is explicit in this regard when it authorizes a procuring agency not to procure a designated item where the item

> ''fails to meet the performance standards set forth in the applicable specification or fails to meet the reasonable performance standards of the procuring agencies.'' Section 6002(1)(B), 42 U.S.C. 6962(c)(B).

Thus, for example, elsewhere today, EPA has proposed to designate shower

and restroom dividers as items that are or can be produced with recovered materials content. The information the Agency has developed shows that these items are available in either steel or plastic with recovered materials content. However, if EPA adopts the proposed designation and recommendations for shower and restroom dividers, the mere fact that these are available with recovered materials content does not require the use of such items in every circumstance. The choice of appropriate materials used in construction remains with building engineers and architects. The effect of designation (and section 6002) is simply to require the purchase of items with recovered materials where consistent with the purpose for which the item is to be used. Procuring agencies remain free to procure dividers of materials other than steel or plastic where the design specifications call for other materials.

*A. Methodology for Recommending Recovered Materials Content Levels*

In providing guidance in the RMAN, the Executive Order directs EPA to present ''the range of recovered materials content levels within which the designated recycled items are currently available.'' Based on the information available to the Agency, EPA recommends ranges that encourage manufacturers to incorporate the maximum amount of recovered materials into their products without compromising competition or product performance and availability. EPA recommends that procuring agencies use these ranges, in conjunction with their own research, to establish their minimum content standards. In some instances, EPA recommends that procuring agencies establish a specific level (e.g., 100 percent recovered materials), rather than a range, because the item is universally available at that recommended level. EPA recommends ranges rather than minimum standards for several reasons:

First, the Executive order directs EPA to develop ranges, not minimum content standards or specific recovered materials levels.

Second, EPA has only limited information on recovered materials content levels for the new items proposed for designation. It would not be appropriate to establish minimum content standards without more detailed information because the standards may be treated as maximum targets by manufacturers and may stifle innovative approaches for increasing recovered material use. EPA hopes that the use of ranges will encourage manufacturers producing at the low end of the recovered materials range to seek ways of increasing their recovered materials usage. Minimum content standards are less likely to encourage such innovation.

Third, many items are purchased locally rather than centrally. As a result, the recovered materials content of the items are likely to vary from region to region depending on local cost and availability of recovered materials. Minimum content standards are unlikely to be effective given the regional variance in recovered materials content because minimum content levels that are appropriate for one region, may be excessively high or low for other regions. A recovered materials content range gives regional procuring agencies the flexibility to establish their own recovered content standards and to make them as high as possible, consistent with the statute, given local product availability and market conditions.

EPA reviewed publicly-available information, information obtained from product manufacturers, and information provided by other Federal agencies regarding the percentages of recovered materials available in the items proposed for designation in the CPG. Based on this information, EPA established ranges of recovered materials content for each of the proposed designated items. In establishing the ranges, EPA's objective was to ensure the availability of the item, while challenging manufacturers to increase their use of recovered materials. By recommending ranges, EPA believes that sufficient information will be provided to enable procuring agencies to set appropriate procurement specifications when purchasing the newly designated items.

It is EPA's intention to provide procuring agencies with the best and most current information available to assist them in fulfilling their statutory obligations under RCRA section 6002. To do this, EPA will monitor the progress made by procuring agencies in purchasing designated items with the highest practical recovered materials content level and will adjust the recommended content ranges as appropriate. For some items, EPA recommends 100 percent recovered materials content levels because the items are already universally available at that level. EPA anticipates that other recommended ranges will narrow over time as other items become more available, although for technical reasons, many may never be available with 100 percent recovered materials content levels.

Under RCRA section 6002(i), it is the procuring agency's responsibility to establish minimum content standards, while EPA provides recommendations regarding the levels of recovered materials in the designated items. To make it clear that EPA does not establish minimum content standards for other agencies, EPA refers to its recommendations as ''recovered materials content levels,'' consistent with RCRA section 6002(e) and Executive Order 12873.

More information on EPA's methodology for recommending recovered materials content levels for designated items is contained in ''Recovered Materials Advisory Notice (RMAN) II—Supporting Analyses,'' located in the RCRA public docket for this notice.

*B. Definitions*

Today's draft RMAN contains recommendations on the recovered materials content levels and postconsumer materials content levels at which the designated items are generally available. For several items being proposed for designation, this RMAN recommends two-part content levels—a postconsumer recovered content component and a total recovered materials component. In these instances, EPA found that both types of materials were being used to manufacture a product. Recommending only postconsumer content levels would fail to acknowledge the contribution to solid waste management made by manufacturers using other manufacturers' byproducts as feedstock. The terms ''recovered materials'' and ''postconsumer materials'' are defined in the CPG at 40 CFR 247.3. These definitions are repeated in this notice as a reference for the convenience of the reader. The Agency is not proposing to change these definitions and will not consider any comments submitted on these terms.

Postconsumer materials means a material or finished product that has served its intended end use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Postconsumer material is part of the broader category of recovered materials.

Recovered materials means waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly used within an original manufacturing process.

*C. Request for Comments*

EPA requests comments, including additional supporting documentation and information, on the draft RMAN regarding the types of recovered materials identified in the item recommendations, the recommended recovered and postconsumer materials content levels, and procurement methods for each of the items. Requests for specific comments and information

are included in the narrative discussions for each of the items.

III. Supporting Information and Accessing Internet

The index of supporting materials is available in the RIC and on the Internet. The address and telephone number of the RIC are provided in **ADDRESSES** above. The following supporting materials are available on the Internet:

''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses,'' August 1, 1996.

''Recovered Materials Advisory Notice (RMAN) II—Supporting Analyses,'' August 1, 1996.

Copies of the following supporting materials are available for viewing at the RIC only:

''Recovered Materials Product Research for the Comprehensive Procurement Guideline II,'' prepared for U.S. EPA by Eastern Research Group, July 24, 1996.

''Research on Items for Designation in the Comprehensive Procurement Guideline,'' December 19, 1995.

''Summary of Information Submitted in Response to EPA's Request for Information on the Designation of Items for the CPG,'' prepared for U.S. EPA by Eastern Research Group, April 12, 1996.

Follow these instructions to access the information electronically:

Gopher: gopher.epa.gov
WWW: http://www.epa.gov
Dial-up: 919 558–0335

The materials can be accessed off the main EPA Gopher menu, in the directory EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/[Non-Hazardous Waste—RCRA Subtitle D/Procurement/RMAN].

FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address

Files are located in /pub/gopher/OSWRCRA.

Dated: November 1, 1996.

Carol M. Browner,

*Administrator.*

Draft Recovered Materials Advisory Notice

The following represents EPA's draft recommendations to procuring agencies for purchasing the items proposed today for designation in the CPG in compliance with section 6002 of the Resource Conservation and Recovery Act (RCRA). These recommendations are intended to be used in conjunction with the RMAN issued on May 1, 1995 (60 FR 21386) and the Paper RMAN issued on May 29, 1996 (61 FR 26985). Refer to the May 1, 1995 RMAN or the Code of Federal Regulations at 40 CFR Part 247 for definitions, general recommendations for affirmative procurement programs, and recommendations for previously designated items. Acronyms used in this RMAN are defined in the document entitled ''Recovered Materials Advisory Notice (RMAN) II—Supporting Analyses,'' located in the public docket for this notice. Table C–5 of this draft RMAN repeats the recommendations made for patio blocks in the May 1, 1995 RMAN. The Agency is not issuing any changes to these recommendations. The recommendations for patio blocks are repeated here for the convenience of procuring agencies and readers, since patio blocks were included in the same table as floor tiles for which a clarification is being issued today.

Contents



I. Specific Recommendations for Procurement of Designated Items

*Part C—Construction Products*

Note: Refer to Part F—Landscaping Products for additional items that can be used in construction.

Section C–5—Floor Tiles Containing Recovered Plastic or Rubber

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table C–5, procuring agencies establish minimum content standards for use in floor tiles and patio blocks. The recommended use of floor tiles containing recovered materials is limited to the applications cited in the table. The Agency requests additional information on floor tiles made with recovered materials in other applications such as standard office flooring.

TABLE C–5.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR FLOOR TILES AND PATIO BLOCKS CONTAINING RECOVERED PLASTIC OR RUBBER [1]

| Product | Material | Postconsumer materials (%) | Total recovered materials content (%) |
|---|---|---|---|
| Patio Blocks | Rubber or rubber blends | 90–100 | |
| | Plastic or plastic blends | | 90–100 |
| Floor Tiles (heavy duty/commercial use) [1] | Rubber | | |
| | Plastic | | 90–100 |

[1] The use of floor tiles with recovered materials content may be appropriate only for specialty purpose uses (e.g., raised, open-web tiles for drainage on school kitchen flooring). Such specialty purpose uses involve limited flooring areas where grease, tar, snow, ice, wetness or similar substances or conditions are likely to be present. Thus, EPA has no recovered materials content level recommendations for floor tiles made with recovered materials for standard office or more general purpose uses.

**Note:** The recommended recovered materials content levels are based on dry weight of the raw materials, exclusive of any additives such as adhesives, binders, or coloring agent. EPA's recommendation does not preclude agencies from purchasing floor tiles or patio manufactured from other materials. It simply recommends that procuring agencies, when purchasing floor tiles or patio blocks made from rubber or plastic, purchase these items made from recovered materials when these items meet applicable specifications and performance requirements.

Section C–6—Shower and Restroom Dividers Containing Recovered Plastic or Steel

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table C–6, procuring agencies establish minimum content standards for use in purchasing shower and restroom dividers.

TABLE C–6.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR SHOWER AND RESTROOM DIVIDERS CONTAINING RECOVERED PLASTIC OR STEEL

| Product | Material | Postconsumer content (%) | Total recovered materials content (%) |
|---|---|---|---|
| Shower/Restroom Dividers | Steel | 10–15 | 27–100 |
| | Plastic | 20–100 | 20–100 |

**Note:** EPA's recommendation does not preclude procuring agencies from purchasing shower and restroom dividers manufactured from another material, such as wood. It simply recommends that a procuring agency, when purchasing shower and restroom dividers made from plastic or steel, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

*Specifications:* EPA recommends that procuring agencies use the following specifications when procuring shower and restroom dividers:

(1) The American Institute of Architects (AIA) has issued guidance for specifying construction materials, including plastic and steel dividers. The AIA guidance is known throughout the construction industry as the ''Masterspec'' and is available through GSA.

(2) U.S. Army Corps of Engineers' Guide Specification CEGS–10160, Toilet Partitions.

Section C–7—Latex Paint

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table C–7, procuring agencies establish minimum content standards for use in purchasing latex paint. EPA recommends the use of consolidated paint in limited applications, such as covering graffiti, where color and consistency of performance are not primary concerns. The Agency recommends the use of reprocessed paint for interior and exterior architectural applications.

TABLE C–7.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR LATEX PAINT

| Product | Material | Postconsumer content % |
|---|---|---|
| Consolidated latex paint. | Left-over latex paint. | 100 |
| Reprocessed latex paint. | Left-over latex paint. | [1] 50–99 |

[1] Based on comments received from its interagency workgroup, EPA believes that the content levels recommended in this table may represent a limited range of colors, such as gray, brown, and other earthtones, and requests comments on the availability of paint with postconsumer content in white and lighter colors.

*Specifications:* EPA recommends that procuring agencies use the following specifications when procuring reprocessed latex paint:

(1) GSA specification TT-P–2846 covers three types of latex paint (interior, exterior, and interior/exterior), three classes (flat, eggshell, and semigloss) and three grades (A: 40 percent minimum volume solids, B: 30 percent minimum volume solids, and C: utility paint for graffiti abatement). GSA requires 50 percent postconsumer content for Grades A and B and 90 percent postconsumer content for Grade C. GSA specifications also require that recycled latex paint contain no more than 200 grams per liter of VOCs.

(2) EPA further recommends that procuring agencies refer to performance requirements in the GSA specification when purchasing reprocessed latex paint made from less than 50 percent postconsumer content.

*Part D—Transportation Products*

Section D–2–Parking Stops Made from Concrete or Containing Recovered Plastic or Rubber

*Preference Program:* EPA recommends that, based on the recovered materials content ranges shown in Table D–2, procuring agencies establish minimum content standards for use when purchasing parking stops.

TABLE D–2.—RECOMMENDED MATERIALS CONTENT LEVELS FOR PARKING STOPS MADE FROM CONCRETE OR CONTAINING RECOVERED PLASTIC OR RUBBER

| Product | Material | Postconsumer content (%) |
|---|---|---|
| Parking stops | Plastic [1] and/or rubber. | 100 |

TABLE D–2.—RECOMMENDED MATERIALS CONTENT LEVELS FOR PARKING STOPS MADE FROM CONCRETE OR CONTAINING RECOVERED PLASTIC OR RUBBER—Continued

| Product | Material | Postconsumer content (%) |
|---|---|---|
| | Concrete containing fly ash or GGBF. | ([2]) |

[1] Parking stops made with recovered plastics may also include other recovered materials such as sawdust, wood, or fiberglass. The percentage of these materials contained in the product would also count toward the recovered materials content level of the item.

[2] See recommendations for cement and concrete containing recovered materials issued in Section C–3 of the May 1, 1995 RMAN (59 FR 21390).

**Note:** EPA's recommendation does not preclude a procuring agency from purchasing parking stops manufactured from another material. It simply requires that a procuring agency, when purchasing parking stops made from rubber, plastic, or concrete, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

*Specifications:* EPA is not aware of any national specifications for parking stops and requests information on this topic.

Section D–3—Temporary Traffic Control Devices Containing Recovered Plastic, Rubber, or Steel

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table D–3, procuring agencies establish minimum content standards for use in purchasing channelizers, delineators, and flexible delineators.

TABLE D–3.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR CHANNELIZERS, DELINEATORS, AND FLEXIBLE DELINEATORS CONTAINING RECOVERED PLASTIC, RUBBER, OR STEEL

| Product | Material | Post-consumer content (%) |
|---|---|---|
| Channelizers ... | Plastic ..... | 25–95 |
| | Rubber base only. | 100 |
| Delineators ..... | Plastic ..... | 25–90 |
| | Rubber (base only). | 100 |
| | Steel (base only). | 25–50 |
| Flexible Delineators. | Plastic ..... | 25–85 |

**Note:** EPA's recommendation does not preclude a procuring agency from purchasing temporary traffic control devices manufactured from another material. It simply requires that a procuring agency, when purchasing channelizers, delineators, and flexible delineators made from rubber, plastic, or steel, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

*Specifications:* EPA recommends that procuring agencies use the following specifications when procuring temporary traffic control devices, including channelizers, delineators, and flexible delineators:

(1) The Federal Highway Administration publishes the *Manual on Uniform Traffic Control Devices,* which contains specifications used by most States for the size, shape, mounting, and placement of temporary traffic control devices.

(2) The States of Florida and North Carolina have specifications that require the use of recovered materials in their flexible delineators. The California Department of Transportation (CALTRANS) has specifications for ''Drivable Flexible Plastic Guide Marker and Clearance Marker Posts.'' A copy of these specifications are available from the RCRA Hotline at 1–800–424–9346.

*Part E—Park and Recreation Products*

Section E–2—Snow Fencing Containing Recovered Plastic

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table E–2, procuring agencies establish minimum content standards for use in purchasing snow fencing.

TABLE E–2.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR SNOW FENCING CONTAINING RECOVERED PLASTIC

| Product | Material | Post-consumer content (%) | Total recovered materials content (%) |
|---|---|---|---|
| Snow fencing. | Plastic ..... | 60–100 | 90–100 |

**Note:** EPA's recommendation does not preclude procuring agencies from purchasing snow fencing manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing snow fencing made from plastic, purchase this item with recovered materials when this item meets applicable specifications and performance requirements.

*Specifications:* The State of New York developed a specification for snow fencing containing 50–100 percent recovered material, but discontinued its use because the state did not purchase enough fencing to warrant maintaining the specification. New York required orange-colored snow fencing four feet high and 100 feet long. Weight was specified at 48 pounds per 100 foot section, with porosity at 50 percent. Temperature tolerance ranged from −50 to +180 degrees F. Strength specifications required machine direction breaking loading of 1,210 pounds per foot-width and a transverse direction breaking load or 340 pounds per foot-width. A copy of this specification is available from the RCRA Hotline at 1–800–424–9346.

*Part F—Landscaping Products*

Section F–3—Garden and Soaker Hoses Containing Recovered Plastic or Rubber

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table F–3, procuring agencies establish minimum content standards for use in purchasing garden and soaker hose.

TABLE F–3.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR GARDEN AND SOAKER HOSE CONTAINING RECOVERED PLASTIC OR RUBBER

| Product | Material | Postconsumer content (%) |
|---|---|---|
| Garden Hose | Rubber and/or plastic. | 60–65 |
| Soaker Hose | Rubber and/or plastic. | 60–70 |

**Note 1:** EPA's recommendation does not preclude a procuring agency from purchasing garden and soaker hoses manufactured from another material. It simply requires that a procuring agency, when purchasing garden and soaker hoses made from plastic or rubber, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

**Note 2:** While Green Seal's specification includes a 50 percent postconsumer content level for watering hoses, all companies from which EPA obtained information, manufacture garden and/or soaker hoses with at least 60 percent postconsumer content.

*Specifications:* EPA recommends that procuring agencies use the following specifications when procuring garden and soaker hose:

(1) ASTM D3901: *Consumer Specification for Garden Hose.* The specification addresses physical and performance characteristics (pressure, tensile, and ripping strength tests) and states that the material components are to be agreed upon by the purchaser and seller.

(2) Green Seal GC–2: *Watering Hoses.* The standard calls for the use of 50 percent postconsumer rubber material in garden hoses and 65 percent postconsumer rubber material in soaker hoses.

Section F–4—Lawn and Garden Edging Containing Recovered Plastic or Rubber

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table F–4, procuring agencies establish minimum content standards for use in purchasing lawn and garden edging.

TABLE F–4.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR LAWN AND GARDEN EDGING CONTAINING RECOVERED PLASTIC OR RUBBER

| Product | Material | Post-consumer content (%) | Total recovered materials content (%) |
|---|---|---|---|
| Lawn and garden edging. | Plastic and/or rubber. | 30–100 | 30–100 |

**Note:** EPA's recommendation does not preclude procuring agencies from purchasing lawn and garden edging manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing lawn and garden edging made from plastic and/or rubber, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

*Specifications:* EPA is not aware of any national performance specifications for lawn and garden edging and requests information on this topic.

*Part G—Non-Paper Office Products*

Section G–6—Printer Ribbons

*Preference Program:* Minimum content standards are not appropriate for remanufactured items, such as printer ribbons, because a core part of the item is reused in the new product, even though certain components of a printer ribbon may contain recovered materials. In lieu of content standards, EPA recommends that procuring agencies adopt one or both of the following approaches: (1) procure printer ribbon reinking or reloading services or (2) procure reinked or reloaded printer ribbons. EPA further recommends that procuring agencies establish policies that give priority to reinking or reloading their expended printer ribbons. If reinking and reloading services are unavailable, procuring agencies should attempt to purchase reinked or reloaded printer ribbons.

*Specifications:* The State of Alabama has a specification for reinked ribbons which requires the ribbons to be vacuum cleaned, reinked, and rewound to proper tension. A copy of this specification is available from the RCRA Hotline at 1–800–424–9346.

Section G–7—Ink Jet Cartridges

*Preference Program:* Minimum content standards are not appropriate for remanufactured items, such as refilled ink jet cartridges, because a core part of the item is reused in the new product, even though certain components of an ink jet cartridge may contain recovered materials. In lieu of minimum content standards, EPA recommends that procuring agencies adopt one or both of the following approaches: (1) procure ink jet cartridge refilling services or (2) procure refilled ink jet cartridges. EPA further recommends that procuring agencies establish policies that give priority to refilling their ink jet cartridges. If refilling services are unavailable or impractical, then procuring agencies should attempt to purchase refilled ink jet cartridges.

*Specifications:* EPA is not aware of any national specifications for refilled ink jet cartridges. The Agency identified a number of procuring agencies that have purchased these items. For example, the Internal Revenue Service of South Florida has purchased the items for the past five years for use in the majority of that agency's ink jet printers and facsimile machines. A copy of the specification used by the Internal Revenue Service is available from the RCRA Hotline at 1–800–424–9346.

GSA made ink jet cartridges available under the Multiple Award Schedule and the Special Item Number Schedule in 1995.

Section G–8—Plastic Envelopes

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table G–8, procuring agencies establish minimum content standards for use in purchasing plastic envelopes.

TABLE G–8.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PLASTIC ENVELOPES

| Product | Material | Post-consumer content (%) | Total recovered materials content (%) |
|---|---|---|---|
| Plastic envelopes. | Plastic ..... | 25 | 25—35 |

**Note:** EPA's recommendation does not preclude a procuring agency from purchasing envelopes manufactured from another material, such as paper. It simply requires that a procuring agency, when purchasing envelopes made from plastic, purchase these items made from recovered materials when these items meet applicable specifications and performance requirements. When purchasing envelopes made from paper, procuring agencies should consult the Paper Products RMAN which was issued in the FEDERAL REGISTER on May 29, 1996 at 61 FR 26985.

*Specifications:* The General Services Administration (GSA), Government Printing Office (GPO) and U.S. Postal Service (USPS) all currently purchase plastic envelopes made from Tyvek® containing recovered HDPE. GSA specifies ''DuPont Tyvek® or equal.'' USPS requires ''DuPont Tyvek®,'' and GPO requires ''white spunbonded polyethylene with the characteristics of DuPont's product no. 1073.'' The title of the solicitation, however, states ''Tyvek® envelopes or similar.''

The U.S. Navy requests that plastic envelopes not be sent to ships in order to minimize onboard disposal of plastic.

*Part H—Miscellaneous Products*

Part H–1—Pallets Containing Recovered Wood, Plastic, or Paperboard

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table H–1, procuring agencies establish minimum content standards for use in purchasing pallets. EPA requests additional information on the performance of virgin versus recovered content plastic pallets for non-military Federal agency use and military applications.

TABLE H–1.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PALLETS CONTAINING RECOVERED WOOD, PLASTIC, OR PAPERBOARD

| Product | Material | Post-consumer content (%) |
|---|---|---|
| Wooden pallets | Wood ..... | 95–100 |
| Plastic pallets | Plastic ..... | 100 |
| Paperboard pallets. | Paperboard ..... | 50 |

**Note:** EPA's recommendation does not preclude a procuring agency from purchasing pallets manufactured from another material. It simply requires that a procuring agency, when purchasing pallets made from wood, plastic, or paperboard, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

*Specifications:* EPA recommends that procuring agencies use the following specifications when procuring pallets:

(1) The Grocery Manufacturers of America issued a widely used standard for 48 by 40-inch stringer pallets known as the ''GMA spec.'' A copy of this specification is available from the RCRA Hotline at 1–800–424–9346.

(2) The National Wooden Pallet and Container Association is developing a standard through the American National Standards Institute (ANSI) for repairable 48 by 40-inch lumber-deck pallets. The ANSI standard is scheduled for release in Fall 1996.

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